Compliance with International law on IDPs, refugee and stateless persons; A case study of Burmese Refugees in Thailand

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Compliance with International law on IDPs, refugee and stateless persons: A case study of Burmese Refugees in Thailand

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Abstract

Thinking about the term “21st Century,” one assumes a false perception about freedom: one thinks nation-states will have the interest of the population. Burma’s recent delineation as a democratic nation perpetuates this assumption. However, upon closer examination, it is clear that Burma lacks the regulations necessary to uphold citizens’ human rights, humanitarian policies and international laws regarding citizens and refugees. The unchecked civil unrest in Burma continues to run rampant, especially in ethnic-specific communities. As evidenced by the continued violence against the Rohingya Muslims, Burma has been unable to obtain a ceasefire agreement. The Rohingya Muslims are plagued with years of oppression, which has since escalated to a level of genocide. The international community has voiced concerns about the situation in Burma, but numerous political obstacles prevent direct confrontation of the Burmese government. In order to move progressively forward, the Burmese military must work towards developing a level of trust with the civilians and with refugees. The government of Burma must acknowledge that torture and other humanitarian violations are taking place and install lawful protections against these acts. Their continued failure to adhere to international law, refugee law, and human rights law is a gross misrepresentation of democracy. As Burma’s citizens flee, seeking refuge in Thailand, they are met with similar human rights abuses. Thailand does not recognize international laws for the protection of refugees, viewing Burmese refugees as a burden that Burma should bear forcing inhumane conditions upon refugees in the border camps so that the refugees are pushed back to Burma. Both Burma and Thailand are guilty of human trafficking, in that they have instigated methods to dispose of these people seeking solace and assistance. Whether a citizen of Burma or a displaced refugee seeking refuge in Thailand, these peoples continue to live a life of fear and despair.
The aim of this thesis is to examine the various ways that Burma and Thailand have not been in compliance with the international laws in place and to propose methods that would enable human rights protections.
Chapter One: Introduction

Importance of Study

In many places in the world, repressive totalitarian regimes have posed a constant threat to the protection of human rights. As a result of these regimes and human rights abuses there has been an increase in forced migration, persecution and forced exile of civilians into neighboring countries. These civilians are called refugees, people who cross international borders to flee conflict and persecution. International laws are supposed to protect refugees and internally displaced persons in matters of human rights, humanitarian rights and international security. International law, where laws govern independent nations in regards to their relationships with one another,¹ and particularly human rights laws, which promote and protect human rights within international, regional and domestic domains, are not being enforced by many countries, specifically in Asia. Asian countries have purposefully distorted the meaning of these laws, which has led to human rights abuses against civilians, specifically (until very recently) within Burma, also known as Myanmar². In an effort to escape these atrocities within their own nation, many Burmese civilians have migrated to neighboring countries, particularly Thailand. Once entering Thailand, they are migrants seeking refugee status. According to the United Nations 1951 Convention Relating to the Status of Refugees, a refugee is defined as:

…”a person who, owing to a well-founded fear of being persecuted on account of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of their nationality, and is unable to or, owing to such fear, is unwilling to avail him/herself of the protection of that country.”³

² The State Law and Order Restoration Council changed, now the SPDC the name of the country from Burma to Myanmar in 1989. However this has become a political issue and is not accepted by the opposition. Throughout the paper the name that will be use is Burma and Burmese, with no political intention.
In addition, many do not leave their country of origin and become internally displaced persons which is defined as,

…persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border.⁴

As migrants seek refugee status on the border area between Burma and Thailand, they are unwanted and unprotected. These countries are not in compliance with international laws including those dealing with refugee rights, and fail to protect these vulnerable people.

I will argue that both Burma and Thailand have not observed international human rights, humanitarian and refugee law. In my case study, I have provided evidence that shows, Burma and Thailand are not in compliance with international agreements and have been in non-compliance for almost two decades. I have examined the provisions of the international laws as they relate to refugees and demonstrate clear evidence of non-compliance.

Sadly, Burmese refugees in Thailand have experienced human rights abuses from both their native land and their new “home” Thailand. In other words, and contrary to their hopes, migration has not solved the problem. These human rights abuses are of concern not only because of the plight of these refugees, but also because media attention has placed greater focus on the repressive nature of the Burmese military junta, elections, and the celebrity status of Nobel Peace Prize winner and pro-democracy leader Daw Aung San Suu Kyi than on the continued suffering of Burmese refugees. The recent elections presented a rare window of opportunity in addressing the human rights conditions of refugees, by drawing attention to their voting rights and whether as a diaspora they would be allowed to vote in future Burmese

⁴ Internal displacement monitoring centre (iDMC) http://www.internal-displacement.org/8025708F004D404D/(httpPages)/CC32D8C34EF93C88802570F800517610 [accessed 30 January 2014]
elections. The transitional government granted the release of Burmese dissident, pro-democracy leader Daw Aung San Suu Kyi on November 13, 2010, resulting in her gaining a seat in Parliament. Burmese President U Thein Sein is slowly transforming Burma into a democratic country by rebuilding prior relationships with the international community. As the international community tunes in, their thoughts and goals are for a democratic Burma. Sanctions formerly placed on Burma have been lifted due to its transition into democracy. United States President Barack Obama has initiated a focus on the situation and visited Burma in November 2012, promoting its transition. However is Burma’s new democratic government ready to address the issue of refugees and human rights? There is also the complicated issue of the right of Burmese refugees to return to their native home country under safe conditions.

In March 2011, a nominal civilian parliamentary government took power. Previously Burma’s political structure was a military junta, The State Peace and Development Council (SPDC), which had replaced the Burmese Socialist Programme Party (BSPP). The commander in chief was General Saw Maung who seized control in 1988 and changed the country’s name from Burma to the Union of Myanmar. Burmese civilians, due to the government’s oppressive military regime, faced discrimination, human rights and labor rights abuses, religious persecution, killings, rape and disappearances amongst ethnic groups such as Karen, Mon, Shan, Kachin, Rohingyas, including “students.” The government abused them through forced labor, torture, beatings, unwarranted taxation, confiscation of land and property, and physical and sexual abuse. The government perpetrated violence against women and girls, and placed restrictions on political and economic freedom, i.e., denying citizens individual freedoms such as

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6 This Burma Socialist Programme Party was established in 1962, the chairmen where Ne Win 1962–1988, Sein Lwin 1988 and Maung 1988 – present; Over 20 year rule.
7 Thai government and UNHCR have used the word “students” as shorthand for political dissidents who sought asylum in Thailand.
freedom of expression, association, religion, and the right to assembly. In addition, the
government abused the country's natural resources, i.e., utilizing the poppy plant to produce
opium and marketing and selling the narcotic as a part of their international trade. These abuses
by the Burmese regime have forced civilians to flee to neighboring Thailand to seek refuge.
Why Thailand? The Thai government offers asylum, which is defined as “protection from arrest
and extradition given especially to political refugees by a nation…”8 However, in Thailand, these
refugees face another obstacle, inhumane living conditions within the Thai-Burma border camps,
because they are not considered to be native Thais.

Part I of this thesis, introduces the conceptualization of international relations theories,
which fall under international law, human rights law, humanitarian law, and refugee law. The
hypothesis is that Burma and Thailand are in violations of international law. Part II of this thesis
demonstrates how these countries in different aspects violate the rights of Burmese refugees, as
they face a constant struggle for individual security. It also examines the tensions between
Burma and Thailand and the conditions of the camps along the border just inside Thailand. Part
III focuses on how international law and the international community attempt to protect and
assist the Burmese refugees. Lastly, I consider some solutions and policy recommendations for
both parties.

The methodological approach focuses on qualitative research such and analysis. Sources
include scholarly books, journals, articles and newspapers, to support and provide different
views on this topic. Interviews both published and unpublished, will be used as examples to
illustrate the Burmese experience. In analyzing the governing laws that are in place, I examined
international law, humanitarian law, human rights law, and refugee law. I also examine the work
of non-governmental organizations and intergovernmental organizations to provide different

8 Oxford dictionary, refugee asylum
perspective from the international community. Additionally, quantitative information will be utilized from such publications as the State of the World Refugees, UN High Commissioner for Refugees (UNHCR) and Human Rights Watch to explore the extent of displaced Burmese refugees within the camps along the border of Burma and Thailand.

In this context, I have posed some central questions:
In what way does the Thai government manipulate Burmese refugees for their benefit?
How should Burmese refugees be treated?
What are the practices in place for asylum seekers within Thailand?
How have the two countries resolved their border policies?
Do the Burmese have the ability to return to Burma? If not, why?
What is the refugee policy in place?
How has the United Nations and UNHCR handled the situation?
What precisely are the international laws that should protect refugees?
Do human rights law, refugee law and international law actually protect these refugees?
What organizations or agencies are attempting to help Burmese refugees? Is this enough?
What fate does the refugee face now?
Has the new government made a difference?
Part II: Review of the Literature

During and following World War II, civilians who were displaced and fled the fighting in Europe due to the atrocities of the war were called “refugees.” The State of the World’s Refugees, defines who a refugee is: “Under international law, the concept has a very specific meaning, and is used to describe people who have left their own country because they have a well-founded fear of persecution, or because their safety is threatened by events seriously disturbing public order.”9 As we move towards the 21st century, refugees have been unwanted and unprotected in many parts of the world. The “refugee problem” has been a controversial concern in accordance with the national interest of the state.

The Realist theoretical framework of international relations has been generally based on the national interest of the state. Realism which was the focal point of international relations, post WW II, describes “anarchy, egoism and resulting imperatives of power politics”10 as the key components of international relations. In contrast to Realist theory concerns for humanity and human rights is also known in international relations as liberalism. Unlike Realists, Liberals “champion scientific rationality, freedom and the inevitability of human progress.”11 From a Liberalist point of view, human rights have become a concern and an active part of international relations. A third theory, Constructivism places “emphasis on the importance of normative as well as material structures, on the of role identity in shaping political action and on mutually constitutive relationships between agents and structures.”12 Constructivist theory claims that states are always evolving and modifying within their social behaviors to change their relations with other states.

9 The State of The World's Refugees 1993: The Challenge of Protection
11 Ibid., p.57
Theorists examine national interests of the state in tension with individual rights and the protection of humanity. The conundrum is that the national interests of the state do not often favor the protection of human rights. In this review of the literature, I will cover the writings of major scholars who have written on Realism, Liberalism, and Constructivism in international relations.

Realist theory views the world in terms of power and describes the world as anarchic, where power is the motivating factor for state behavior. According to scholar Jack Donnelly, “realists suggest that anarchy and egoism so severely constrain the space for the pursuit of moral concerns that it is only a small exaggeration to say that states in anarchy cannot afford to be moral.”

Realists fear and acknowledge that these common ideals can restrict those in power from addressing moral norms and shape the state national interests and objectives. According to Kenneth Waltz, “states in anarchy cannot afford to be moral. The possibility of moral behavior rests upon the existence of an effective government that can deter and punish illegal actions.”

He describes states to be solely self-interested, in order to maintain power. He argues if states are moral, they will be vulnerable to other states. They will not have the ability to protect themselves as a whole. Realist theorist, Hans Morgenthau, states “the actions of states are determined not by moral principles and legal commitments but by considerations of interest and power.”

He also argues the moral principles of the state will interfere with underlying power. Power does not compromise morality; it does however play a crucial role in the interest of the state. At times one wonders what power is. According to Joseph S. Nye, Jr. “power means the ability to get the outcomes one wants.” He argues that hard power, is the ability to coerce, and soft power is ability to attract and persuade. He discusses that soft power is the new way and

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road to success in world politics. Soft power can manifest itself and create allies. This new thought undermines realism and opens the door for a broader approach to the interest of the state. For example, Burma has been under strict military rule, with a primary goal of holding onto power and thus falling under Realist theory. As of 2011, democratic elections have been held, a new president has been in office and the national interest of the country appears to have reformed to a more liberalistic perspective.

Unlike realist, the “tasks for liberals has been to develop and promote moral standards which would command universal consent, knowing that in doing so states may be required to jeopardize the pursuit of their own national interest.”¹⁷ This demonstrates a different perspective on what is considered in the national interest of the state. Their view is that practical goals and ideals collectively, will lead states into interdependence and prevent war. States will form alliances and institutions to assist in policing and creating peace. Liberalist theory has broadened its ideals; it “believes the legitimacy of domestic political order is largely contingent upon upholding the rule of law and state’s respect for the human rights of its citizens.”¹⁸ Now, due to the evolution of soft power a strong desire to pursue the importance of the rule of law has emerged.

Human rights developed into a global concern after WWII. The execution of Jews, by “Nazi” Germany during the war opened the eyes of the international community. The injustices that took place were horrific for the world to see; denial of life, food, freedom of speech, shelter and most importantly nationality. Since then, human rights have become a concern. Institutions and treaties were created in order to prevent and protect civilians from abuse by the state. As the

years pass, many countries still fail to comply with the international human rights laws and policies in place.

The birth of constructivist theory during the late 1980s and early ‘90s questioned the realist view of power and interest. The constructivist’s theoretical framework claims that “systems of shared ideas, beliefs and values also have structural characteristics, and they exert a powerful influence on social and political action.”19 A constructivist’s understanding of the world is the power lies collectively in the ideas that people believe in, not on the interest of the state. Alexander Wendt contends “that people act towards objects, including other actors, on the basis of the meaning that the objects have for them.”20 He rationalizes that relationships between countries are based upon the actions of the people or actors (institutions), instead of material exchanges, constraints or natural consequences as in realist theory. He also contends, “the distribution of power may always affect states’ calculations, but how it does so depend on the intersubjective understanding and expectations, on the ‘distribution of knowledge,’ that constitute their conceptions of self and other.”21 States, through interactions and signals, may interpret power in different ways whether positively or negatively to each other. There are various constructivist theorists who have challenged the thoughts of realism, specifically on what states really want as their national interest and what international social structure is behind it.

According to Martha Finnemore, “we cannot understand what states want without understanding the international social structure of which they are a part.”22 She questions and further investigates how states know what they want and think. She communicates which factors play a significant role in their decision-making. She argues that “states are continually evolving. They take on new tasks and create new bureaucracies to carry out those tasks. Since, in an

important sense, states are what they do; these changes in state function at some level change the nature of the state itself."\(^{23}\) States are embedded in dense networks of transnational and international social relations that shape their perceptions and their preferences in consistent ways. For instance, in the case of Burmese refugees in Thailand, they seek asylum in Thailand. Therefore Thailand provides a “home.” However, while Thailand has been a receptor of Burmese refugees, the government’s treatment of the refugees reflects a less than receptive thought process.

This overview of the theoretical framework in international relations, when looking at refugee rights, places this issue under liberalist and constructivist thought. These theories represent a focus on individuals, both the refugees and state leaders. Realist perception of state interest is power with no inclusion of moral values towards individuals. Liberalism is a traditional political train of thought composed of a set of practical goals and ideals, with an emphasis on human rights. Constructivism acknowledges that international relations is a constantly changing field. For instance, if states are unhappy with their status in relation to other states, they need to modify their social behavior to make these changes in these relationships. Due to these emerging profound theories, human rights have become gradually interlocked within the international relations realm. These views have developed and been enforced through national and international law, institutions and international awareness.

The growth of democracy and the emphasis on human rights in international relations has gradually changed governmental and state perceptions because of the need to protect and prioritize the rights of their citizens. There are many systems and institutions in place which have assisted those in need; nevertheless there are still some states where leaders do not perceive their national interest as promoting human rights. These more authoritarian regimes strive for power

and repress any opposition to their power. Thus many individuals flee to other states. Millions of refugees become unwanted and unprotected and violations of their human rights make them victims in many different parts of the world.
Chapter III: International Law - Examining the provisions of international laws as they relate to the status of refugees

Disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people....All human beings are born free and equal in dignity and rights.\(^{24}\)

Throughout modern history, civil wars, war crimes, internal and external conflicts have been a leading factor in the refugee movement. Refugees have long existed, been treated unfairly and forced to flee to neighboring countries. As they reach the neighboring countries, they discover their presence is unwanted. They are faced with persecution and exile from their home country and are faced with fear of the lack of protection in the host country. As years pass, human rights violations and atrocities continue to occur and the need to protect civilians is not diminishing. In many cases, the world has come to embrace national political security over human rights protection, but in some cases, this is changing.

Human rights are primarily based on the principle of respect for the individual, and that each person must be treated fairly and with dignity. There are many different perspectives on what are human rights, but the Universal Declaration of Human Rights states the following:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status…\(^{25}\)

Following the Holocaust during World War II, the international community came to realize that there was a need to stop human rights violations and to provide for protection of refugees. A human rights violation occurs when actions by state actors’ abuse, overlook, and/or deny a person’s fundamental human rights. After World War II, and with the reflection on the gross

\(^{24}\) The Universal Declaration of Human Rights, Preamble and Article 1  
\(^{25}\) The Universal Declaration of Human Rights, Article 2
human rights violations at the time, the international community felt that state actors should comply with customary human rights laws. Because customary laws are not written down, international treaty agreements were formed to codify the rights of human beings.

The United Nations was created at the end of WWII. Its purpose is to maintain peace, security, and respect among nation states, in addition to promoting and protecting human rights. Under the United Nations Charter it is charged with “promoting international co-operation in the political field and encouraging the progressive development of international law and its codification.” The United Nations Charter asks the UN General Assembly to initiate studies and make recommendations to encourage the development of international law and its codification. It also assists state actors in complying with international agreements. However, there are numerous accounts of refugee rights that are being violated, even though they are protected under international law.

International law is “a system of rules, principles, and concepts that governs relations among states and, increasingly, international organizations, individuals, and other actors in world politics.” The laws are observed and accepted as binding in relations between state actors and individuals. Treaties in force are compulsory upon the parties and must be performed in good faith. According to Beth Simmons, “governments make legal commitments cynically and are always anxious to shake off the restraining influence that international law might have upon their foreign policies, to use international law instead for promotion of their national interests.” It serves as a framework for a state actor’s goal to comply with international agreements and promote the underlying purpose, the protection of refugees. According to Hans Morgenthau, “international agreements lack a restraining power, especially since governments retain the right

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26 The Charter of the United Nations and the Statue of the International Court of Justice, Article 13 (1)(a)
28 Simmons Beth A. “Compliance with International Agreements” in International Law, edited by Charlotte Ku and Paul F. Diehl, Boulder and London: Lynne Reinner Publishers, 2009 p. 147
to interpret and apply the provisions of international agreements selectively.” There are state actors that take into account their own view on what is considered international law and ignore the law when it suits their national interest. However, for example, refugees, for fear of persecution, are unable to avail themselves of the protection of the host country and human rights violations become a concern. As the 21st century evolves, advocacy groups, governmental bodies and international organizations have continued to focus on human rights for being human beings without discrimination.

**International Human Rights Law**

Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible.

In a world, where there are conflicts, human rights abuses are inescapable. Human rights are an instrument of international law which advocates and protects people. It applies to all situations, and concerns all persons subject to the jurisdiction of the state. Its purpose is to protect individuals from arbitrary behavior by a government, as in the case of refugees. Today, human rights are written into the International Bill of Human Rights of which the Universal Declaration of Human Rights (UDHR) is a part and was established in 1948. Under this declaration, human rights are considered to be universal and are applied to “all human beings by virtue of their humanity.” It is also defined as fundamental regardless of lifestyle, race, color, sex, language, religion, origin, birth and belief. UDHR’s objective is to provide human beings with rights and freedoms without discrimination. Under the Universal Declaration of Human Rights, the following articles relate to human rights violations of refugees:
• **Article 6** Everyone has the right to recognition everywhere as a person before the law.

• **Article 7** All are equal before the law and are entitled without any discrimination to equal protection of the law…

• **Article 13 (1)** Everyone has the right to freedom of movement and residence within the borders of each State.

(2) Everyone has the rights leave any country, including his own, and to return to his country.

• **Article 14 (1)** Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations

• **Article 15 (1)** Everyone has the right to a nationality

• **Article 23 (1)** Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

• **Article 25 (1)** Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, and medical care and necessary social services…

Most importantly, “**Article 29 (2)** states that in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”

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32 The Universal Declaration of Human Rights, Articles 6, 7, 13 (1) (2), 14(1)(2), 15 (1)
33 The Universal Declaration of Human Rights, Articles 23(1), 25(1) and 29(2)
In 1966, the United Nations adopted two covenants. The Covenant on Civil and Political Rights which protects and recognizes 17 rights: freedom from slavery, freedom of religion, freedom of speech, freedom of assembly, the right to life and equal protection of the law. The Covenant on Economic, Social and Cultural Rights protects and recognizes different cultures and languages and promotes a standard of living, quality of education and health care. In the Covenant on Civil and Political Rights the following articles relate to refugee status and violations of civil and political rights:

- **Article 2 (1)** Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

- **Article 5 (2)** There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.  

- **Article 12 (1)** Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.  
  (2) Everyone shall be free to leave any country, including his own.  
  (4) No one shall be arbitrarily deprived of the right to enter his own country.

- **Article 16** Everyone shall have the right to recognition everywhere as a person before the law.

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34 International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49. Articles 2(1), 5(2)
• **Article 26** All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

• **Article 27** In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.35

Under the Covenant on Economic, Social and Cultural Rights, the following articles relate to refugee status and the violations of economic, social and cultural rights:

• **Article 5** (1) Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

(2) No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.36

• **Article 6** (1) The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

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35 International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49. Articles 12(1)(2)(4), 16, 26, 27

36 International Covenant on Economic, Social and Cultural Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with article 27. Articles 5(1)(2)
• Article 7(a) Remuneration which provides all workers, as a minimum, with: (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

• Article 11(1) The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.\(^\text{37}\)

As these governing norms are in place to ensure the protection of civilians and ethnic groups against human rights abuses, they work alongside other international treaties, declarations, constitutions and instruments to adopt the basic principles and protections of human rights. However, the contradiction is that the basic principle and protection of human rights falls under the sovereign governing state. The governing state’s interest should lie in protecting its people, as we now refer to the sovereign responsibility to protect. International law, at least in the Western democratic world, is the backbone of international human rights law “it consists of rules of law derived from the consistent conduct of States acting out of the belief that the law required them to act that way.”\(^\text{38}\)


International Humanitarian Law (Geneva Conventions)

In the world today, there are more internal conflicts (civil wars) within states rather than between states. In most cases, the parties to these conflicts are demanding greater political and human security. In order to protect civilians caught up in wars, humanitarian law was created. The definition of international humanitarian law is, “all those rules of international law which are designed to regulate the treatment of the individual – civilian or military, wounded or active – in international armed conflicts.”39 Under international humanitarian law, there are two set of common rules, pertaining to limitations or prohibitions of specific means and methods of warfare (the Hague Laws), and regarding the protection of civilians and those no longer fighting (Geneva laws).40 They outline the conduct and responsibilities of belligerent states, neutral states and individuals engaged in warfare, to protect persons (civilians). The Fourth Geneva Convention addresses and defines the treatment and protection of civilians,

- **Article 4** Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.

Nationals of a State which is not bound by the Convention are not protected by it.

Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are…

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40 Ibid., p245-246
• **Article 9** The present Convention shall be applied with the cooperation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict. For this purpose, the Protecting Powers may appoint, apart from their diplomatic or consular staff, delegates from amongst their own nationals or the nationals of other neutral Powers. The said delegates shall be subject to the approval of the Power with which they are to carry out their duties.

• **Article 27** Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.  

• **Article 35** All protected persons who may desire to leave the territory at the outset of, or during a conflict, shall be entitled to do so, unless their departure is contrary to the national interests of the State. The applications of such persons to leave shall be decided in accordance with regularly established procedures and the decision shall be taken as rapidly as possible. Those persons permitted to leave may provide themselves with the necessary funds for their journey and take with them a reasonable amount of their effects and articles of personal use...

• **Article 44** In applying the measures of control mentioned in the present Convention, the Detaining Power shall not treat as enemy aliens exclusively on the basis of their nationality 'de jure' of an enemy State, refugees who do not, in fact, enjoy the protection of any government.  

As the years passed, additional revised protocols were added and adopted in 1977 and 2005 to the Fourth Geneva Conventions. The Protocols of 1977 focused on the civilian population. The first protocol is the Protection of Victims of International Armed Conflicts and...
the second protocol is Relating to the Protection of Victims of Non-International Armed Conflicts. These protocols address and protect every civilian, which includes non-nationals and refugees. It is intended for armed forces and civilian population. The main objective is to protect civilians who do not partake in the fighting or cease to take part in it. This also applies to civilians who then turn to take refuge in another state due to civil war in their country.

**Refugee Law**

In a world where persecution, massive human rights violations and armed conflict remain a daily reality, the need to protect refugees is greater than ever before. Asylum for those forced to flee must be preserved. But the current scale and nature of the refugee problem and limits to the absorption capacity of asylum countries mean traditional methods of protection are no longer sufficient. They must be complemented by flexible approaches that respond to the present period of transition and upheaval in world affairs.43

The numbers of migrants crossing international borders are rising as the world continues to suffer from conflicts as well as naturally caused events. These migrants flee due to humanitarian crises, civil wars, armed conflict, human rights abuses and persecution in order to seek refuge and protection. These migrants are called refugees. What is a refugee?

A refugee is someone who has been forced to flee his or her country because of persecution, war, or violence. A refugee has a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group. Most likely, they cannot return home or are afraid to do so. War and ethnic, tribal and religious violence are leading causes of refugees fleeing their countries.44

This definition sets the tone for refugee law which is a segment of international law that delineates the protection of refugees. Refugee law intertwines with human rights law, (the protection from human rights abuses) and humanitarian law (the protection from and during armed conflict).

How have international agencies protected and alleviated the pain of refugees? The United Nations High Commissioner of Refugees (UNHCR), created in 1950 by the United Nations, provides protection and assistance to refugees and of internally displaced people. Their commitment states “refugees must be protected, and helped towards a lasting solution to their plight…providing international protection…and…seeking permanent solutions for the problem of refugees.”45 Refugees under the UNHCR include the following: asylum seekers, refugees who have returned home but still need help in rebuilding their lives, local civilian communities directly affected by the movements of refugees, stateless people and so-called internally displaced people (IDPs). IDPs are civilians who have been forced to flee their homes, but who have not reached a neighboring country and therefore, unlike refugees, are not protected by international law and may find it hard to receive any form of assistance. In many cases refugees and IDPs are not able to return to their homes or home country as they escaped the oppression and abuses from the state. UNHCR focuses on the international protection of the refugees, admission to safety, exemption from forcible return, non-discrimination and assistance for survival. However, while the UNHCR has these elements in place, the interest of the state and the political security of the country interfere with these ideals.

The refugee problem has continued and the creation of the United Nations Convention Relating to the Status of Refugees in 1951, along with the 1967 Protocol has been an important instrument. Its objective is to protect persons seeking asylum from persecution and the recognition of refugees and their status.46

The convention and the protocol reflect the right to be free from punishment pertaining to the impropriety of their entry and/or presence within a country. Their fear and rationale for escaping the disgrace of what is going on in their own country defines them as a refugee. A refugee has a right to be protected against forcible return, or in other words refoulement,

No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social or political opinion. 47

Under international law it is not legal to force a refugee to return. This moral imperative is now both codified and customary law. This means that states that are not party to the 1951 Refugee Convention still must respect the principle of non-refoulement. Therefore, states are obligated under the Convention and under customary international law to respect the principle of non-refoulement.

The 1951 United Nations Convention and 1967 Protocol Relating to the Status of Refugees contains the following Articles:

- **Article 3** The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.
- **Article 20** Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals.
- **Article 23** The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.
- **Article 26** Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence to move freely within its territory, subject to any regulations applicable to aliens generally in the

47 1951 United Nations Convention Relating to the Status of Refugees, Article 33(1)
same circumstances\textsuperscript{48}

- *Article 31 (1)* The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

- *Article 32 (1)*, whereby the parties undertake not to expel a refugee lawfully in their territory

- *Article 34* Whereby the parties undertake as far as possible to facilitate the assimilation and naturalization of refugees

- *Article 35 (1)* The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.

  (2) In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the appropriate form with information and statistical data requested concerning:

  (a) The condition of refugees,
  (b) The implementation of this Convention, and;
  (c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees. \textsuperscript{49}

\textsuperscript{48} 1951 United Nations Convention Relating to the Status of Refugees, Article 3, 20, 23, 26, 31 (1), 32 (1), 34

\textsuperscript{49} 1951 United Nations Convention and 1967 Protocol Relating to the Status of Refugees, Article 35 (1) (2)
Conclusion

In conclusion, there are a number of human rights protections for refugees as embodied under international law. First, the International Bill of Human Rights includes a declaration and two covenants. The Universal Declaration of Human Rights, sets forth general principles and standards as stated in articles 13 and 14, safeguard for refugees with their freedom of movements and asylum resolution. The two covenants define specific rights and their limitations. Articles 12 and 26 of the International Covenant on Civil and Political Rights protect freedom of movement and all persons as equal before the law. Articles 6 and 11 of the Covenant on International Economic, Social and Cultural Rights recognize the rights to work and to an adequate standard of living. The Geneva Conventions protect refugees under armed conflict and time of war. Under the Geneva Conventions, refugees are protected by article 4 and 35 as persons who find themselves in the middle of conflict and who leave the territory during a conflict.

Refugees, throughout the years have been increasing in numbers and it continues to become a problem. In 1951, the creation of the United Nations Convention Relating to the Status of Refugees, along with the 1967 Protocol has become important instruments. Their objective is to protect persons seeking asylum from persecution and the recognition of refugees and their status. Under these convention articles 20 to 23 state that refugees shall be accorded the same treatment as nationals and Article 34 refers to the assimilation and naturalization of refugees. Nevertheless these international human rights are not enforced. Every year there are countless refugees displaced due to persecution, conflict, civil wars and natural disasters. These international laws serve as a preventive function but are at times unsatisfactory to provide ample human rights protection, as evidenced by the growing flow of refugees in crisis. Due to constant internal conflicts and the military necessity of warfare, the rule of law is applied
by limiting war’s destructive effect and mitigating human suffering. There are still countless examples of violations of international humanitarian law against civilians. States need to take better measures to ensure the protection of civilians during armed conflicts. They need to find peaceful solutions before it becomes an armed conflict and have an outflow of migrating refugees to neighboring states.
Chapter IV: The status of refugees around the world

Throughout armed conflict and persecution, civilians flee in fear and often become victims of the atrocities. Refugees are defined as people who cross international borders to flee conflict and persecution. An asylum-seeker is someone who says he or she is a refugee, but whose claim has not yet been definitively evaluated. Internally displaced persons, or IDPs, are among the world’s most vulnerable people. Unlike refugees, IDPs have not crossed an international border to find sanctuary but have remained inside their home countries. A stateless person is someone who is not considered a citizen of any State. “Refugee” is a frequently used term in the world today. Since the growth of civil wars and armed conflict, following the end of the Cold War, the evolution of civilians fleeing to neighboring states has become intense. Protection from the host state however is not imminent, and delays can mean continued persecution and fear. Alexander Betts states,

…a key function of the state is to ensure that its citizens have access to a range of civil, political, and economic, and social rights. In the case of refugees, the inability or unwillingness of the country of origin to guarantee these rights has compelled them to seek access to those rights in another state.

Once refugees seek asylum in another state, there is still no guarantee that they will be safe. States, who provide asylum, may fail to realize the economic implications of short-term and long-term housing, camps, health conditions, protection, and the provision of basic human rights.

Throughout the years, many host states and states of origin have succumbed to ignoring human rights abuses and the continuance of armed conflicts within refugee camps. Several instruments of law have been created in safeguarding refugee rights, as is the 1951 Convention

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51 UNHCR Asylum-Seekers [http://www.unhcr.org/pages/49c3646c137.html] [accessed 18 December 2013]
52 UNHCR Internally Displaced People [http://www.unhcr.org/pages/49c3646c146.html] [accessed 18 December 2013]
53 UNHCR, Global Trend Report 2012 [http://www.unhcr.org/51b1d61db.html] [accessed 18 December 2013]
on Refugees. Nevertheless, many states fail to comply with these rules of law. As of today, since the immediate aftermath of World War II, a country with one of the highest number of asylum seekers has been from Afghanistan, which had been placed number one for the last 32 years. As war increases in Syria, it has temporarily taken over the lead. Data from 2012 shows 476,400, refugees and 2,016,500, internally displaced persons and in 2014, these numbers have grown even higher. Furthermore, in 2012 the highest contributing countries of refugees are Afghanistan with 2,585,600, Somalia with 1,136,100 and lastly Iraq with 746,400. Refugee hosting countries are Pakistan with 1,638,500, Islamic Republic of Iran with 868,200 and Germany with 589,700, and now Jordan, Turkey and Lebanon.

The United Nations High Commissioner for Refugees reported high numbers of people of concern in 2012 for the following countries, Afghanistan with 1,499,280, Iraq with 1,656,710, Syrian Arab Republic (Syria) with 2,784,750, Sudan with 2,148,200, Democratic Republic of the Congo with 3,184,290 and Pakistan with 2,455,860; this includes refugees, asylum-seekers, IDPs and stateless persons. Additionally, the United Nations High Commissioner for Refugees has reported, including the Syrian crisis in 2013, refugees are at their highest peak since 1994. Additionally, 55 percent of the refugees reported come from armed conflict and civil war: Afghanistan, Somalia, Iraq, Syria, and Sudan. Towards the end of 2011, 42.5 million people were displaced compared to 2012 with 45.2 million people displaced.

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56 Ibid
57 UNHCR Global Report 2012, Afghanistan [http://www.unhcr.org/51b1d63e0.html] [accessed 18 December 2013]
58 UNHCR Global Report 2012, Iraq [http://www.unhcr.org/51b1d63b2.html] [accessed 18 December 2013]
60 UNHCR Global Report 2012, Sudan [http://www.unhcr.org/51b1d634a.html] [accessed 18 December 2013]
62 UNHCR Global Report 2012, Pakistan [http://www.unhcr.org/51b1d63f0.html] [accessed 18 December 2013]
In 2012, Asia with 46% and Africa with 25% were the leading regions with the highest asylum claims. Records show a rise of IDPs per day, in 2003 it was 5,000 and in 2012 it was 25,000.63

Presently, armed conflicts in Banqui, Central African Republic displaced an estimate of 210,000 people. Many fled across the Oubangui River to Zongo in the Democratic Republic of the Congo, in search of protection however, the borders are closed and fear of being shot is prominent. Then there are the ethnic armed conflicts in the Democratic Republic of Congo (DRC) and its North Kivu province, fighting between the rebel M23 movement and government troops. It has displaced an estimated 66,000 plus families towards the northern western part of Uganda. A refugee from DRC, Marinyese Nyota explained, "We ran without anything. When the rebels arrived, no one took anything, not even a hoe, not even bedding, not anything. You are only saving your body to get here."64 With fear of being caught by the rebels she fled with her husband and five children and hid in bushes. They were without food or aid and sanitation was very poor. This conflict has undergone 18 months so far. Congolese refugees continue to seek refuge in Uganda and other bordering countries.

The United Nations High Commissioner of Refugees has been stressed in recent years. UNHCR tries to provide humanitarian aid to those who are unable to fend for themselves. Meanwhile, humanitarian assistance and protection is scarce as aid workers are not always able to obtain access. Humanitarian space—the conditions that enable people in need to have access to protection and assistance, and for humanitarian actors to respond to their needs—is shrinking.65 Governments and armed militias become an obstacle for the international community to provide the basic humanitarian needs to the main populations of people of concern

64 UNHCR struggles to keep up with arriving Congolese refugees http://www.unhcr.org/51e911fb9.html [accessed 19 July 2013]
65 The State of the World’s Refugees: In Search of Solidarity, United Nations High Commissioner of Refugees 2012 p.6
such as refugees, asylum-seekers, IDP and stateless people. These challenges increase the high level of civilians who continue to suffer.

Refugees

The existence of refugees appears endless. States fail to preserve and protect relations amongst civilians, in which security withers away and burdens other neighboring states. States continue to garner what is imperative to them whether it is a political and military objective and civil wars and communal conflicts continue. Then the exodus of refugees is persistent; when the dilemma of a group seems resolved, others seem to emerge. The association between violations of human rights and massive refugee outflows is clearly established. The continuation of persecution, armed conflicts and violence has increased over the years, forcing civilians to flee for their safety.

Since the start of 2012, challenges arose around the world, and many states are unstable and the complexity of ongoing turmoil has multiplied in Africa and Middle East. As in the case of Syria, a year after the initial start of the civil war, refugees had tripled within a 6 month period. The majority of the refugee populations are woman and children fleeing into nearby Iraq, Jordan, Lebanon and Turkey.

Presently, the flow of refugees from Somalia has rapidly increased. Somalia has endured different accounts of conflicts and natural disasters for the last decades: civil wars, clan warfare, political conflict, military activity and droughts. There have been peace initiatives, sanctions and UN influence. The neighboring countries that are affective are Kenya with 512,100, Ethiopia with 223,000 and Yemen with 226,900 and Djibouti. As of mid-2013 there are 1,130,939

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68 UNHCR Global Report 2012, Yemen [http://www.unhcr.org/51b1d63d0.html](http://www.unhcr.org/51b1d63d0.html) [accessed 13 December 2013]
refugees reported originating from Somalia. Peace in Somalia has increased in the last year and people are beginning to return home.

In the UNHCR’s “Mid-Year Trends 2013,” the organization reported that “5.9 million people were forced to flee their homes in the first six months of the year, compared with the 7.6 million for all of 2012.”70 A major factor for this mid-year rise in refugees is due to Syria’s political upheaval. The amount of new refugees within the first six months in 2013 is 1.5 million compared to 1.1 million in 2012.71 These numbers do not include asylum-seekers as they are not registered with the UNHCR and are seeking asylum. They are considered a category of their own and with the same necessities and protection.

Asylum-Seekers

There are many factors involved in contributing to the lives of civilians as they escape from their homeland. States fail to protect civilians from both conflicts and natural disasters. Patterns of mass influxes into neighboring countries emerged throughout the 1970s until today. Continuously, civilians seek refuge and once they do, they encounter a block to their protection and safety within the host state. They are perceived as asylum-seekers, and while admittance to the state should be apparent, some are unable to be admitted and some are only on temporary basis.

What is the dilemma that asylum seekers face? Asylum-seekers are “refer to a person who requests refugee status in another state, normally on the grounds that they have a well-founded fear of persecution in their country of origin, or because their life and liberty are threatened by armed conflict and violence.”72 The government agencies in the host country make the decision of whether a person is a refugee or not. If denied, this can lead to a situation where

70 UNHCR report warns of unusually large numbers of forcibly displaced this year [http://www.unhcr.org/print/52b310a06.html] [accessed 13 December 2013]
71 Ibid
the asylum seeker will be an illegal immigrant (a person who is not a citizen of the country and at the same time have no rights as a refugee). In this scenario the country does not have to adhere to the Convention Relating to the Status of Refugees. The asylum-seekers lives become endangered in the host the country. Normally, if a person enters a country to seek asylum, their refugee status will then be evaluated. The rights of a person mainly, an asylum-seeker, must always be respected, whatever the validity of their claim to refugee status. Pressures are imposed by the international law for states to absorb asylum-seekers. A main problem facing all asylum-seekers in the region is the uncertainty of their rights upon arrival. Safety is a big concern, as they travelled to other countries in search of refuge; they are confronted with other dangers, such as piracy at sea and mines on land. At the frontier, they are threatened with push-backs or redirections which could result in injuries. Some are admitted for temporary refuge, but the location of their camps becomes precarious.

Yemen encounters a large number of refugees from the Horn of Africa in which they primarily travel by boat in the Gulf of Aden and the Red Sea. They are the only country in the Arabian Peninsula, that is signatory to the 1951 Refugee Convention and the 1967 Protocol. Somali refugees are granted prima facie, in which they are recognized by the state which aims to ensure safety, protection and basic humanitarian treatment upon arrival to the host country. Other nationalities, like Ethiopians, undergo the Refugee Status Determination which permits UNHCR to determine whether asylum seekers fall within the criteria for international refugee protection. Such claims have increased, thus so far there are 41,934 Ethiopian refugees waiting for asylum status. Since 2011, turmoil and armed conflict burdens Yemen itself, yet it opens the doors to thousands of refugees. Statistically, within the last two years, migration has decreased from 2012

to 2013: Somalis from 23,086 to 10,867 and Ethiopians from 84,376 to 53,941.\textsuperscript{75} In 2012, Yemen hosted 226,900 Somalis refugees and 5,600 Ethiopian asylum-seekers; however, it has a high number of internally displaced people as a result of its own conflict with 385,300.

**Internally Displaced People (IDPs)**

Respect and ensure respect and protection of the human rights of internally displaced person, including human treatment, non-discrimination, equality and equal protection law.\textsuperscript{76}

When displaced in one’s own country, a person becomes susceptible to on-going internal conflicts. People are lost, discouraged and uncertain of the future. The continuous thoughts of fear and insecurity whether it is for food, shelter or space dominates life. Global figures shows that there are a higher number of internally displaced people compared to refugees. Since 1989 to present, during conflict and violence-induced displacement, IDPs numbers have been higher than refugees. The Internal Displacement Monitoring Centre (iDMC), a leading source of information and analysis on internal displacement worldwide recorded in 2011, IDPs (26.4 million) and refugees (10.4 million). The following year the IDPs increased to 28.8 and refugees to 10.5.

Internal conflicts and havoc still continued in 2012, leaving many displaced and forgotten. The iDMC reported there were 2.8 million IDPs for 2012; 6.5 million were new displacements around the world.\textsuperscript{77} (See exhibit A)

\textsuperscript{75} UNHCR, New Arrivals in Yemen Comparison 2010 - 2013 [http://www.unhcr.org/4fd5a3de9.html](http://www.unhcr.org/4fd5a3de9.html) [accessed 20 December 2013]


Internally Displaced Peoples in 2012
(28.8 million)

Exhibit A
To reduce and regulate IDPs the United Nations High Commissioner of Refugees established a Camp Coordination and Camp Management Cluster. Its goals and objectives revolved around setting standards, protection, disseminating the camp coordination and camp management concepts and expanding the capacities of cluster leads and members to put it in practice. As challenges arise, the cluster starts providing positive impact on IDP communities. A successful plan is in the Democratic Republic of the Congo with the National Congolese Army agreeing to remove a brigade in Katanga Province due to allegations of serious human rights violations against IDPs. Some of these violations are sexual and gender-based violence, looting and the forced recruitment of child soldiers. Safety interventions were applied to improve the camps, such as shelter, health, water and sanitation. As of December 2013, there was an estimated 3,000,000 IDPs in the Democratic Republic of the Congo.

In 2012, the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention 2009) came into force. It is a regional instrument that binds governments to provide legal protection for the rights and well-being of those forced to flee inside their home countries due to conflict, violence, natural disasters, and other human rights abuses. The Kampala Convention overtly sets out a role for civil society organizations in providing protection and assistance to IDPs. There are 16 African states that have ratified the convention, including Democratic Republic of Congo. There are states, along with the assistance of civil society, which set out to eradicate the concerns and pleas of the IDPs. Yet, there is the concern for stateless people.

79 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention 2009)  
http://www.internal-displacement.org/africa/kampala-convention/ [accessed 20 December 2013]
Stateless

Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality. 80

At times one wonders what nationality is. It means a group of people who share the same history, traditions, and language, and who usually live together in a particular country or status of being a member or citizen of a particular nation. 81 In many parts of the world there is a huge amount of people who are stateless. Due to circumstances that surround them, such as political change, expulsion from a territory, and discrimination, they are in a state of limbo and do not have the required documentation to be considered part of a state.

Universally, under human rights law, nationality is a fundamental right and a foundation of identity, dignity, justice, peace, and personal security. 82 In retrospect, without this it means having no legitimate protection, rights, documentation, education, health services and stateless persons are vulnerable to exploitation and human rights abuses. Travelling between countries becomes impossible as they are not able obtain a passport. They now become illegal immigrants. Another concern they are faced with is that in some states women are not allowed to pass on their nationality to their children. In circumstances like these birth certificates are very vital and provide proof of nationality. There are many births that go unregistered hence, statelessness intensifies. There are however, countries that give citizenship to the children and of a woman in need.

80 The Universal Declaration of Human Rights Article 15 (1)(2)
There are two legal instruments that set standards to reduce statelessness across the world. Under the 1954 Convention relating to the Status of Stateless Persons, it ensures the protection of the stateless persons. The following articles are significant when it comes to statelessness:

- **Article 3** Non-Discrimination, “The contracting States shall apply the provisions of this Convention to stateless persons without discrimination as to race, religion or country of origin.
- **Article 27** Identity Papers, “The Contracting States shall issue identity papers to any stateless person in their territory who does not possess a valid travel document.
- **Article 32** Naturalization, “The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.”

This convention encompasses the rights and obligations of stateless people in regards to their legal status in the country of residence.

The 1961 Convention on the Reduction of Statelessness seeks to prevent people from becoming stateless in the first place.

- **Article 1** A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted:
  (a) at birth, by operation of law, or
  (b) upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this Article, no such application may be rejected.

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83 UNHCR, Convention Relating to The Status of Stateless Persons Article 3, Article 27 and Article 32
85 UNHCR Convention on Reduction of Statelessness Article 1
This convention advocates for the rights to nationality for those who are stateless and do not obtain documentation with the State by birth or descent. However, it does not address what states should do with the stateless people in their territory. It is left to the states’ judgment, and as a result this has created tension, discrimination, and conflicts among the people.

In the UNHCR Global Report 2012, there are 221,000\textsuperscript{86} stateless persons in Syria, Iraq with 120,000\textsuperscript{87} and Burma with 808,100\textsuperscript{88} and Thailand with 506,200.\textsuperscript{89} (See exhibit B) There are many states that are not signatories to the conventions and have high numbers of stateless people who remain in indeterminate status. Throughout the years UNHCR has attempted to work in partnership with states and civil society however, challenges exist and UNHCR is not able to obtain accurate information, as in the case of the Dominican Republic.

\textsuperscript{86} UNHCR Global Report 2012, Somalia \url{http://www.unhcr.org/51b1d63cb.html} [accessed 18 December 2013]
\textsuperscript{87} UNHCR Global Report 2012, Iraq \url{http://www.unhcr.org/51b1d63b2.html} [accessed 18 December 2013]
\textsuperscript{88} UNHCR Global Report 2012, Myanmar \url{http://www.unhcr.org/51b1d641b.html} [accessed 18 December 2013]
\textsuperscript{89} UNHCR Global Report 2012, Thailand \url{http://www.unhcr.org/51b1d6420.html} [accessed 18 December 2013]
Stateless Persons via UNHCR 2012 Global Report

Burma
Iraq
Syria and Africa
Thailand

Exhibit B
As of 2013, Dominican Republic has an estimated 210,000\textsuperscript{90} stateless people; this does not include the Dominican Constitutional Court ruling on September 2013, revoking the citizenship for residents of Dominican Republic of Haitian descent. This ruling can leave at least 200,000 additional people, stateless. They will have no nationality within the Dominican Republic and Haiti. The court ruling is that citizenship could be granted only to those born to one Dominican parent since 1929, legalizing retroactive denial of citizenship.\textsuperscript{91} In addition, only one parent has to be a legal resident in the Dominican Republic for a child to obtain Dominican citizenship. This court order is viewed as the refusal by the state to ensure the registration of births, mainly when the principle of \textit{jus sanguinis} (citizenship on the basis of descent) is present.

The Dominican Republic is not a signatory to the Stateless Conventions, however they are signatories to the American Convention on Human Rights (January 21, 1978) and the International Covenant on Civil and Political Rights (January 4, 1978). They are violating treaty, American Convention on Human Rights, Article 20: Right to Nationality, in the American Convention on Human Rights,

1. Every person has the right to a nationality.
2. Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality.
3. No one shall be arbitrarily deprived of his nationality or of the right to change it.\textsuperscript{92}

 Currently, they are stateless and have no protection under Dominican law. As a result many will be deported and immigrants of Haitian descent will be forced to enter Haiti and the uncertainty of life continues. As we live in the 21\textsuperscript{st} century, one wonders if humanity will live in

\textsuperscript{90} 2014 UNHCR country operations profile – Dominican Republic. [http://www.unhcr.org/cgi-bin/tegis/vtx/page?page=49e4915b6][accessed 19 February 2014]


\textsuperscript{92} American Convention of Human Rights, Article 20. Right to Nationality (1)(2)(3)
peace and harmony. This ruling has undertaken a step back into history, when once president
dictator Leonidas Trujillo set a similar example as to exiling and the massacre of millions of
Haitians at the Dominican and Haiti border. Is there hope and will that states will adhere to the
laws in place? Will the states protect those who are in need?

The status of world refugees has grown rapidly throughout the years. Turmoil, armed
conflicts and natural disasters have had an impact for these huge influxes. The UNHCR and civil
society have tried to keep the population from dying and falling into the hidden cracks of the
world. However, there are many states that are not following the laws in place for the protection
and safety of civilians. Instead they choose to follow their self-interest and power.
Chapter V: Case Study – Burmese Refugees in Thailand

OVER THE PAST FIVE YEARS, I have often recalled that the United Nations’ Charter begins with the words: “We the peoples.” What is not always recognized is that “we the peoples are made up of individuals whose claims to the most fundamental rights have too often been sacrificed in the supposed interests of the state or the nation.93

Burmese Refugees in Thailand: Scope of the Problem

Historically, Burma has endured an ongoing internal conflict to maintain its control as a sovereign state. A sovereign state is a territory which exercises internal and external sovereignty which consists of a permanent population and government, independence from other states and powers, and the capacity to enter into relations with other sovereign states.94 Within its territory, Burma has undergone various authoritarian rulers and constant battles among ethnic groups. As early as the 15th century, two royal dynasties, Taungoo and Konbaung ruled Burma. Then beginning in 1885, Burma was ruled by Great Britain and British India. In 1948, a group of Burmese comrades, who were led by General Aung San, obtained democracy in Burma. With the assistance of Japan, the Burmese comrades succeeded in winning democratic independence and established a constitution in Burma. However, during the period of 1948-1962, Burma endured suffering, conflict and internal struggles among its ethnic groups. Due to this turmoil the democratic government of Burma became weak and was not able to hold onto power. In 1958, Prime Minister U Nu obtained temporary power to try to restore political order. However, in 1962, General Ne Win led a military coup, under the Burma Socialist Programme Party, that took over Burma and continued to run the country until 1988. Throughout this authoritarian regime (26 years), the country came under international restrictions and isolation. Initially, the international community ignored the internal struggles in Burma and the military junta took the

94 Shaw, Malcolm Nathan (2003). International law. Cambridge University Press. p. 178. “Article 1 of the Montevideo Convention on Rights and Duties of States, 1933 lays down the most widely accepted formulation of the criteria of statehood in international law: It note that the state as an international person should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other states”
opportunity to impose repressive measures on Burmese civilians in order to control any opposition. The military regime dictated, controlled, manipulated and violated civilian rights within the country. In 1988, another military regime, the State Law and Order Restoration Council (SLORC) led by General Saw Maung, took control and the international community began to realize the constant torture, harassment, arbitrary arrest and imprisonments that were going on in the country. He later renamed the party the State Peace and Development Council (SPDC) which he headed until 1992. General Than Shwe succeeded General Saw Maung up until 2011.

Burma has held the longest military dictatorship in any country but recently, in November 2010, held its first democratic elections since authoritarian rule began. Even though these elections took place, it imposed restrictions on opposition parties, detention of political activist and limitations on freedom of expression. Nevertheless, the people elected a parliament and the current president, U Thein Sein (2011), a military officer. After years of oppression and isolation from the outside world, Nobel Peace Prize winner Daw Aung San Sui Kyi never lost hope of one day becoming free. Now, after the 2010 elections, she was released and will continue her political support of democracy in her country. She advocates for a democratic Burma and is now a member of parliament. She manages to stay strong for her beloved country’s freedom. Presently, President U Thein Sein has put in place a transition policy in Burma to become a more democratic country. He has released political prisoners and Daw Aung San Sui Kyi is participating in parliament and restrictions are being lifted. The question remains is the transition to democracy protecting refugees and cultivating a free civil society?
Burmese Government Policy on Refugees: how are they protected and affected?

We, Rohingyas, are like birds in a cage. However, caged birds are fed while we have to struggle alone to feed ourselves.95

-A Rohingya villager from Maungdaw, North Arakan

Burma’s government has a long history of military suppression on the lives of civilians and refugees on a consistent basis. Military control has been eminent; policies are vaguely set leaving room for interpretation. Now, after years of repression, Burma is slowly transitioning to a democratic country and a promising role for civil society is now evident. As Burma transcends into democracy it must realize that democracy is a government by the people, a state of society characterized by formal equality of rights and privileges.96 Civil society plays a role in democracy as defined by the World Bank

… to refer to the wide array of non-governmental and not-for-profit organizations that have a presence in public life, expressing the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations. Civil Society Organizations (CSOs) therefore refer to a wide array of organizations: community groups, non-governmental organizations (NGOs), labor unions, indigenous groups, charitable organizations, faith-based organizations, professional associations, and foundations.97

Civil society supports and assists in the delivery of social services and implementation of development within regions that are weak due to a post-conflict situation, as in the case of Burma. Burma specialist, David I. Steinberg, believes that Burma’s perception of civil society is non-existent. He defines civil society in relation to Burma as,

In pre-democracy Burma, civil society did exist but once the military junta stepped in 1962, it placed restrictions on organizations and societal power in order to control all aspects of civilian freedom. The authoritarian government underwent two different “socialist democratic” bodies during which military rule were dominant. Without the presence of civil society there is no support for refugees. However, human rights abuses were exposed to the international community and sanctions were imposed on Burma. The National League for Democracy (NLD) was established in 1988, due to the 1988 Uprising which was a sequence of demonstrations, riots and protests against the military government. Aung San Suu Kyi, an icon and the voice for pro-democracy in Burma, was the leader of NLD. In 1990, the government realized the growth of followers for pro-democracy and decided to host the first democratic elections. As a result of the elections, the NLD won, yet the military junta did not allow them to take office. They suppressed the NLD party and Aung San Suu Kyi was placed under house arrest. One of her main objectives is for the government to establish the “rule of law.” The UN Secretary-General’s definition of the rule of law is,

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For the United Nations, the rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.\(^9\)

With this definition in place, is Burma ready to transition to the rule of law and democracy? Are they ready to for the rule of law to be enforced? If so, this will ease the general public’s fear and ensure safety.

The rule of law in Burma is the Constitution of 2008; the main objective of the constitution is to safeguard civilians from human rights abuses. The 2008 Constitution of the Republic of the Union of Myanmar, states the following:

354. Every citizen shall be at liberty in the exercise of the following rights, if not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquility or public order and morality:
(a) to express and publish freely their convictions and opinions;
(b) to assemble peacefully without arms and holding procession;
(c) to form associations and organizations;
(d) to develop their language, literature, culture they cherish, religion they profess, and customs without prejudice to the relations between one national race and another or among national races and to other faiths.

355. Every citizen shall have the right to settle and reside in any place within the Republic of the Union of Myanmar according to law.\(^10\)

The constitution outlines the basic fundamental rights for the protection of the civilians and refugees. However, the implementation of the constitution is inconsistent. Violations of civil rights still exist and the military comes first. The government communicates that little by little, they are transitioning to a democratic system, but the more closely one evaluates the situation; the articles of the constitution are not being monitored and followed. As in the case of the


Rohingya Muslims an ethnic minority living for years in the Rakhine state. Yet they face religious and ethnic discrimination. Furthermore, they are not recognized as one of 135 ethnic minority groups in Burma. They are considered to be “illegal immigrants” from Bangladesh. Without citizenship, the Rohingya have no civil rights in Burma. They are denied the following:

- The regime refuses to issue identification cards to Rohingya, which are necessary to be able to travel, as well as to obtain passports and enroll in higher education.
- They are denied land and property rights and ownership. The land on which they live can be taken away at any time.
- The Rohingya people are barred from government employment.
- Marriage restrictions are imposed on them. They are limited to two children per couple.
- They are subject to forced labor, extortion and other coercive measures.
- The Rohingya are subject to curfews and other restrictions on basic freedoms.

They are failing to comply with Article 354 (c) of the 2008 Constitution of the Republic of the Union of Myanmar.

The government is not in compliance with international law, human rights law, humanitarian law and refugee law. Under human rights law, they are in violations of the Universal Declaration of Human Rights: the right to be equal before the law (Article 6), freedom of movement within borders and to return to the host country (Article 13) and to securing rights, freedoms in a democratic society (Article 29).

Burma established in September 2011 the Myanmar National Human Rights Commission. Its common goal is to promote and safeguard fundamental rights of citizens with an emphasis on civil society. The right of the state is to protect civilians but the state has not ratified international human rights treaties, and feels that they do not have to comply with, a number of international treaties and norms. Burma is not a signatory to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights treaties. Burma is however; violating article 5 and 12, no restrictions can be
imposed on fundamental human rights, and liberty and/or freedom of movement of the International Covenant on Civil and Political Rights. In the International Covenant on Economic, Social and Cultural Rights, Burma is violating article 5, that states may not engage in the destruction of rights and freedoms.

In 1992, Burma signed the 1949 Geneva Conventions, Convention IV relative to the Protection of Civilian Persons in Time of War, articles 4, 9 and 27, the protection and safeguarding of persons/civilians when armed conflict occurs in the state. When the state does not protect its people from violence, civilians are forced to relocate and a wider spread of armed conflict develops, and forcing refugees to be less likely to return. They flee with despair and fear of further conflict and the unknown. They also face the uncertainty of being able to come back home.

Burma is not a signatory to the 1951 United Nations Conventions Relating to the Status of Refugees and 1967 Protocol Relating to the Status of Refugees. Even though they are not a signatory, because the Convention sets accepted norms, they are in violation of articles 20 and 23: refugees should be treated with respect and provided public assistance and relief.

Burma is a member of the Association of Southeast Asian Nations, ASEAN. According to the ASEAN, Burma is not adhering to the following principles,

6. The enjoyment of human rights and fundamental freedoms must be balanced with the performance of corresponding duties as every person has responsibilities to all other individuals, the community and the society where one lives. It is ultimately the primary responsibility of all ASEAN Member States to promote and protect all human rights and fundamental freedoms.

7. All human rights are universal, indivisible, interdependent and interrelated. All human rights and fundamental freedoms in this Declaration must be treated in a fair and equal manner, on the same footing and with the same emphasis. At the same time, the realisation of human rights must be considered in the regional and national context bearing in mind different political, economic, legal, social, cultural, historical and religious backgrounds.
8. The human rights and fundamental freedoms of every person shall be exercised with due regard to the human rights and fundamental freedoms of others. The exercise of human rights and fundamental freedoms shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition for the human rights and fundamental freedoms of others, and to meet the just requirements of national security, public order, public health, public safety, public morality, as well as the general welfare of the peoples in a democratic society.\(^\text{101}\)

David Steinberg states, “in November 2007, the ASEAN states, including Myanmar, signed the ASEAN Charter, which their governments ratified by the end of 2008. The Charter contains a human rights provision but without stipulations of monitoring, enforcement, and penalties.”\(^\text{102}\) Even though, the Charter does not specifically establish an enforcement mechanism, it is still the responsibility of Burma to act in accordance with the Charter principles. As a member of ASEAN, it is their duty and commitment to the Charter to prevent human rights violations.

Ethnic insurgencies, together with the repressive military government have created a volatile climate. There are eight commonly known national ethnic groups, which are Kachin, Kayah, Kayin, Chin, Mon, Bamar, Rakhine and Shan. However, throughout the country there are 135 distinct subgroups ethnic groups. There is constant fighting between the armed opposition groups and the Burmese government as they pursue control over villages in order to take food, taxes, and money. The government also, tortures and/or kills villagers who are suspected of having contact with the opposition government or army. Villages are burned and civilians flee in fear and as in the case of Knoo Know, a son whose father was in the Kachin Independence Army (KIA),


We were internally displaced people. We had to move from village to village because the State Law and Order Restoration Council SLORC soldiers pursued us and burned our villages down. They were doing this because these villages were supporting the KIA with foo, and also because some villagers were related to the KIA soldiers.\(^{103}\)

His family was always being followed by the Burmese government, as they were seen as a threat to the government. This creates dangerous and unstable conditions for villagers living in the areas. They would travel from village to village, the jungle and then to the border of Thailand, in fear they would be captured and killed.

The State of the World’s Refugees 1997, estimated a little over 115,000 Burmese refugees fled to the border of Thailand. In 2012, the UNHCR Global Report estimated 83,300 Burmese refugees and 13,500 Burmese asylum-seekers are still currently in the camps in Thailand.\(^{104}\)

Now, political and ethnic conflicts have escalated again in Burma, making it difficult to obtain peace in the country. In the Kachin State a civil war erupted in June 2011 and the Burmese Army violently attacked the Kachin Independence Organization (KIO). A 17-year ceasefire agreement was breached. Countless incidents of torture in rural villages, areas of armed conflict and government buildings were reported against the civilian population and with the support of the state. There were an estimated 100,000 civilians displaced in camps in the Kachin State and Shan State. In a report, Ending Wartime Torture in Northern Myanmar, by Fortify Rights, it documents the torture and abuse of civilians by the Burmese Army. A civilian, Nhkum La stated,


\(^{104}\)UNHCR Thailand [http://www.unhcr.org/51b1d6420.html][accessed 1 March 2014]
They beat us severely and asked us questions. Again we answered we do not belong to KIA, but they just kept beating us. They beat us and threatened us, beat us and threatened us, and so on. They said they would kill us. They kept us tied and kept asking questions, and they kept threatening us that they will kill us. […] They didn’t give us water or food. They allowed us to go to the toilet but we had to ask permission. It was three days and three nights. We had no food or water. They took everything we had—our warm coats, our knives, our batteries for our flashlight, and they took my money.105

Burma is violated the ASEAN Charter article 39,

39. ASEAN Member States share a common interest in and commitment to the promotion and protection of human rights and fundamental freedoms which shall be achieved through, inter alia, cooperation with one another as well as with relevant national, regional and international institutions/organisations, in accordance with the ASEAN Charter.106

Presently, ethnic conflicts still continue to exist, as in the case of the Rakhine state. They were disbarred from being Burmese. Since its implementation of the Citizenship Law of 1982, which only members of officially recognized ethnic groups are eligible, there are three categories of citizens, namely citizen, associate citizen and naturalized citizen.107 The Burmese government fails to recognize any Bengali immigrants, Rohingya as an ethnic group. President Thein Sein communicated at the Chatham House, London, “there is currently no proposal to amend the 1982 [Citizenship] law and the parliament does not have any plan, as yet. To use the term Rohingya, in our ethnic history we do not have the term Rohingya.”108 President Thein Sein does not want to acknowledge the Rohingya Muslims, and does not intend to amend or revoke the Citizenship Law of 1982. These groups face state policies, persecution of their fundamental rights and forcible displacements.

105 Fortify Rights, Myanmar: End Wartime Torture in Kachin State and Northern Shan State, [link] [accessed 12 June 2014]

106 ASEAN Human Rights Declaration [link] [accessed 1 March 2014]

107 Refworld, Burma Citizenship Law [link] [accessed 4 March 2014]

108 Todayszaman, Myanmar President: No Plans to amend the 1982 Citizenship Law [link] [accessed 4 March 2014]
The Special Rapporteur on the human rights situation in Myanmar, Tomas Ojea Quintana commented, “I have no doubt that the violations committed over the years with complete impunity have undermined the rule of law in Rakhine state, and had serious consequences for the peaceful coexistence of communities there.” As a result, in 2012, inter-communal violence broke out, leaving many Rohingya Muslims internally displaced and stateless. They are not considered Burmese. There are currently 430,400 internally displaced people and 808,100 stateless civilians in Burma.

Burma has signed ceasefire agreements with several ethnic insurgencies in regards to armed conflict. However, the government is responsible for protecting all ethnicities in Burma.

**Thai Government Policy on Refugees: how are they protected and affected**

Administratively, Thailand is a constitutional democratic monarchy termed the Royal Thai Government. It is one of the few Asian countries that has maintained a free state without having been colonized. The prime minister is the head of the government. Thailand has upheld a long history of providing refuge for Indochinese states including, Cambodia, Laos and Vietnam. Their view regarding human rights especially refugees, asylum seekers, and stateless people primarily is that they are entering “in violation of the 1979 Immigration Act; by law they are “aliens” without Thai nationality, valid passports, or visas.” Thailand’s current Immigration Act B.E. 2522 (1979) has no provision that allows legal entry to a person who is categorized as an asylum seeker or refugee. Instead, the person would be considered an illegal alien if his or her travel document becomes invalid, and would be subject to prolonged detention and/or deportation. This is in violation of several international human rights conventions.

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110 UNHCR Myanmar [http://www.unhcr.org/51b1d641b.html] [accessed 3 March 2014]

The Thai Ministry of Interior and United Nations High Commissioner for Refugees have an agreement in place to provide assistance to refugees. Thailand has not ratified the 1951 Refugee Convention, and under national law recognizes the status of refugee as “illegal migrants”\(^{112}\) however; since the 1980s they have provided nine camps along the Thai-Burma border. Now, as Burma’s formerly repressive authoritarian state starts to transition into democracy, these camps are still there. These camps have kept tight control over the refugees. They are only allowed to stay within their premises and if they step out of the camps they will be deported. As of January 2013, approximately 85,060 refugees, 11,400 asylum seekers and 506,200 stateless persons are split among the ten Thai-Burma border camps.\(^{113}\) (See map exhibit C).

During the last two decades, Burma, due to its repressive government, has expelled civilians to Thailand. Thailand in return has hosted a large population of refugees, asylum seekers and stateless persons. Thailand, as stated before, is not a party to the 1951 Refugee Convention, but has always respected temporary refuge. Even though Thailand offers asylum, refugees face discrimination, violence, and lack of living conditions and basic human rights protection from the Thai government.

…Tham Hin camp is widely known to have the worst conditions. The camp houses more than 9,000 persons, but is designed to accommodate less than half that number; refugees’ homes are small and cramped, and are built literally side-by-side along very narrow pathways. This overcrowding, combined with the lack of appropriate sanitation and water facilitates for a population of this size, create a situation where serious public health risks are endemic, and where other social problems associated with such conditions are reaching alarming levels.\(^{114}\)

\(^{112}\) Lang, Hazel J. Fear and Sanctuary: Burmese Refugees in Thailand, Ithaca, New York: Southeast Asia Program Publications, Cornell University 2002 p.92


In addition, food aid is slowly fading. In the Irrawaddy newspaper, Nyar Hter, chairman of Ei Htu Hta refugee camp, stated “we only get rice and salt. We don’t get other additional foods such as yellow bean, cooking oil, canned fish and other nutritious foods like before.”

Thai authorities have been interfering silently with the process.

Human Rights Watch, a non-governmental organization, has expressed through various publications (since 1988) their concern on protecting and safeguarding refugees. This includes, forced returns, rejections at the frontier and attacks in the refugee camps. Human Rights Watch states, that their “obligations towards refugees based in customary international law, the most important of which is the obligation not to send refugees back to any country where they are likely to face persecution; this is the principle of non-refoulement,” has not been met.

International relations theorist, Morgenthau states “International agreements lack restraining power, especially since governments generally retain the right to interpret and apply the provisions of international agreements selectively.” Nevertheless, morally Thailand must adhere to the laws that are in place in order to provide an effective mode of protection for refugees.

Residing in Thailand, Burmese refugees are faced with fear and uncertainty. Thailand has taken upon itself to become a “safe haven” for refugees who are fleeing their host country and are unable to return. Yet, they have had their doubts when doing so; they believe and have anticipated the “burden” that has been placed on Thai soil. The refugees are perceived as jeopardizing the livelihoods of the Thai people. Thailand has not provided the right to seek and to enjoy asylum from persecution as outlined in article 14 of The Universal Declaration of

Human Rights. Instead refugees will be punished if they are found outside the camps. On January 2, 2010, camp refugee Naw Bler Paw communicated to Human Rights Watch correspondent, Saw Aung, “My husband went out at 8 a.m. one day, and the next morning a friend came back and said, ‘He’s dead.’ Security guards found Hser Ko dead and partially buried, shot in the abdomen with his intestines protruding.” He was suspected of illegally transporting teak wood which was 15 kilometers from the camp. Under Thai defense he was breaking the law. He was looking for food and wood for his family at the camp.  

Thailand has not upheld articles 26 and 27 in the International Covenant on Civil and Political Rights, of which Thailand is a signatory as of October 1996.

The Rohingya Muslims risk their lives in trying to reach safety in Malaysia (majority Muslims) escaping from the ethnic violence in Burma. They travel by boats and get detained in Thai waters. Mathew Smith, executive director of Fortify Rights NGO states, “The Thai government has consistently failed to respect the rights of Rohingya asylum seekers; it’s an appalling response to serious human rights violations.”  

Thailand also does not provide adequate, equal employment and a standard of living as is inscribed in the International Covenant on Economic, Social and Cultural Rights which Thailand ratified in September 1999. In a Human Rights Watch report, Ad Hoc and Inadequate it states,

> While these camps offer their residents some element of protection, the Thai government imposes harsh restrictions on refugees’ freedom of movement, prohibiting residents from leaving the camps, earning income, or obtaining a good quality education. To the Thai government, those who leave the camps without permission forfeit their claim to asylum and become illegal immigrants subject to arrest, detention, and deportation. Yet by remaining in the camps without any source of income, refugees become completely dependent on aid agencies, who

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are themselves subject to the donor fatigue of the international community, which has been supporting Burmese refugees since the mid-1980s.\textsuperscript{120}

Thailand also undermines the basis of refugee law and leaders are prejudiced against Burmese refugees because they are not considered Thai. They need to be provided the basic necessities for survival. As a Charter member of the Association of Southeast Asian Nations, they have failed to follow this principle:

16. Every person has the right to seek and receive asylum in another State in accordance with the laws of such State and applicable international agreements.\textsuperscript{121}

Burmese refugees believed they would find protection in Thailand and discovered they were unwanted and not fully protected in a different land.

**Thailand-Burma Border Politics and Relations: Camps, Conditions and Discrimination**

It is so strict to live here. There is nothing to do. I am not allowed to go outside the camp. There is no job, no work. So much stress and depression. I feel that I am going to go crazy here. —Burmese refugee, Nu Po camp, Tak province, January 2012\textsuperscript{122}

Burma, throughout the years has made it difficult for civilians to run towards the border because of the dangers due to military and democratic movements, ethnic insurgencies, and now, political change in Burma. Uncertainty by the Burmese government has prolonged a presence of refugees in Thailand and places a huge strain on diplomatic relations between Thailand and Burma. Refugees on the Thailand-Burma border have created a source of tension between the Thai government and the Burmese military. Ever since the first plight of refugees in 1984, they have flooded the border and made it their home. As in the case of ethnic Rohingya from Burma, they arrive by sea and are considered to be illegal migrants. More than 2,000 Rohingya were detained in poor conditions by Thai immigration.

\textsuperscript{120} Human Rights Watch, “Ad Hoc and Inadequate: Thailand’s Treatment of Refugees and Asylum Seekers,” September 2012
\textsuperscript{121} ASEAN Human Rights Declarations [4 February 2014]
\textsuperscript{122} Human Rights Watch, “Ad Hoc and Inadequate: Thailand’s Treatment of Refugees and Asylum Seekers,” September 2012
Despite the fact that Thailand’s expectation in hosting Burmese refugees was thought to be short-term, the outcome and years have dashed those expectations. Strong solidarity in keeping the national security and political ties between Bangkok and Rangoon has been the overall goal of both countries. Hazel Lang states, “Thailand’s basic approach to the Burmese refugees has been to grant *prima facie* asylum as long as it is low-key and a humanitarian gesture…”  

Thailand and Burma have undergone years of strenuous efforts to keep the peace. Burma’s unsteady political government, drug trafficking efforts across the border with Thailand and the consistent flow of refugees has led to a constantly chaotic situation.

The majority of the camps are located in secluded and mountainous areas of Thailand. The purpose of having them in these areas is to keep them away from hospitals, nearby towns and a mobile phone network. As of 2013, the camps are extremely overcrowded; there are currently 10 camps referred to as “temporary shelters,” along the Thailand-Burma border. It is estimated that there are 129,020 refugees, not including internally displaced persons: Weing Heng (540), Ban Mai Nai Soi (12,870), Mae Surin (3,370), Mae La Oon (12,860), Mae Ra Ma Luang (14,570), Mae La (45,980), Umpiem Mai (14,700), Nu Po (13,890), Don Yang (3,500), Tham Hin (6,740). Due to their longevity, refugees are confined and faced with low quality educational and training opportunities. Additionally, they are dependent upon the assistance of aid for shelter, food, basic needs and protection. Alexander Betts states, “They have limited access to freedom of movement, few educational or training opportunities, and no right to work.”

The non-governmental organization, Thai Burma Border Consortium, has delivered humanitarian awareness to civil society actors as well as ethnic opposition groups in promoting

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values and skills necessary for conflict transformation and early recovery.127 There are however, many uncertainties within the camps, which place safety and protection concerns on the refugees.

As stated, the factor is to keep refugees isolated, to live in designated camps and place significant restrictions on seeking to leave the camps either for employment or educational purposes. Refugees who leave the camps are considered to be illegal and will be arrested, deported and imprisoned. The Royal Thai Government oversees the refugee camps with the Ministry Of Interior (MOI) implements the refugee policy agreed to by the National Security Council (NSC)128 and controls the day-to-day organization of the camps in collaboration with the provincial and district authorities. Community Based Organizations (CBO), Non-governmental organizations and the United Nations High Commissioner of Refugees assist and support the refugee communities with shelter, food, and basic needs, with certain limitations and restrictions.129

The Ministry of Interior Regulations of 31 May 1991 outlines the limitations on staff assistance, providing food, clothing, border location and medicine.130 The humanitarian organizations are not able to manage their relief aid without the MOI following their every step. They keep a guarded realm within the camps. Therefore, a refugee becomes dependent on the aid and does not have the opportunity to escape the encampment of the refugee camps. As a result, The Royal Thai Army Paramilitary Rangers and the Border Patrol Police assist in providing security.

128 Lang, Hazel J. Fear and Sanctuary: Burmese Refugees in Thailand, Ithaca, New York: Southeast Asia Program Publications, Cornell University 2002 p.95 National Security Council is the highest and powerful civilian decision-making body directly concern with refugee policy.
Countless Burmese refugees have died and are born in the refugee camps in Thailand. Most refugees have never left the camps and remain uncertain if they will ever have the opportunity to do so. They have tried to build their lives around Thai society, but that society has deprived the refugees of basic fundamental rights and they are at risk of exploitation and human trafficking. There are other sets of refugees that have been exploited and trafficked in Thailand, as in the case of the Rohinyga Muslims, Reuters International correspondent Jason Szep uncovered a systemic policy in Thailand to move Rohingya refugees from the camps and hand them over to human traffickers.

The Rohingyas are then transported across southern Thailand and held hostage in a series of camps hidden near the border with Malaysia until relatives pay thousands of dollars to release them. Reporters located three such camps - two based on the testimony of Rohingya held there, and a third by trekking to the site, heavily guarded, near a village called Baan Klong Tor. Ismail, a survivor of the trafficking, stated “It seemed so official at first…They took our photographs. They took our fingerprints. And then once in the boats, about 20 minutes out at sea, we were told we had been sold.”

Due to lack of freedom of movement, they become vulnerable to the security officials who protect the camps. Burmese refugees also face discrimination in the camps under refugee status determination (RSD) in Thailand. If a refugee has not yet registered with the Provincial Admission Boards (PAB) and the UNCHR, they are considered illegal and the credibility of their asylum claims becomes invalid.

132 Ibid
Abuses, inside and outside the camp is a continuing occurrence that endangers the lives of many Burmese refugees. They are exposed to various human rights abuses, LGBTI violence has increased due to its unorthodox nature. Moses, a Burmese refugee comments on the discrimination he faces inside the camps because he is gay,

Living in the camps is a big challenge for LGBTI individuals. The camps are crowded and gossip spreads quickly. Taunts and abuse against LGBTI people are looked on with amusement by bystanders, and attempts to find protection from the established camp leaders results in advice to “change our appearance” or in even further abuse. After finding the refugee camp to be no better than the situation I had left behind, I began thinking about why we were being treated so badly, what was wrong with us and what we could do to live peacefully with the community. Then I came up with some ideas for how I believed we could change perceptions. By participating in community work perhaps we could create understanding between the community and LGBTI people.\(^\text{134}\)

Thailand’s welcoming mat will no longer become an option. Thailand does not want to continue to be a host country for the refugees. They see Burma becoming a democratic country and feel that the Burmese refugees should return home. The U.N. refugee agency says that Burma is not ready for the return of refugees who only know camps inside Thailand. UNHCR states that there are still landmines, lack of infrastructure and there is still civil war and ethnic attacks on the Rohingya. The timing is not right. Fear for the refugees becomes evident, being forcibly ousted before the conditions in Burma permit them to return. This can cause anxiety among the refugees in the camps as it will be challenging for them to prepare for the unknown.\(^\text{135}\)

\(^{134}\) Thomson Reuters, Gay Burmese refugees face daily discrimination and abuse in Thailand,\(^\text{http://www.trust.org/item/20130429143019-3z8et/}\) [accessed 7 June 2014]

Exhibit C.\textsuperscript{136}

Chapter VI: The role of International Organizations and Civil Society

What do international organizations and civil societies say? What role do they play?

A FORUM WAS CREATED – United Nations – where all nations could join forces to affirm the dignity and worth of every person, and to secure peace and development for all peoples. Here States could unite to strengthen the rule of law, recognize and address the needs of the poor, restrain man’s brutality and greed, conserve the resources and beauty of nature, sustains he equal rights of men and women, and provide for the safety of future generations.137

Centuries of internal and external conflicts has forced many to leave their homes and countries. Many leave without knowing where to go or what will become of them. The WWII tragedy introduced international law and international organizations with an underlying mission to assist and support refugees. The role of international actors and civil society represents a continuous struggle for the protection and rights of refugees, asylum-seekers, statelessness, and internally displaced persons. As years passed, vast refugee movements continue and the international community contributes in every way possible to resolve this problem. The birth of intergovernmental organizations, non-governmental organizations, humanitarian agencies, advocacy groups, private or public sector companies, governments and media are there alongside to assist.

Since the start of the League of Nations and now, the United Nations, civil society has set out to promote resolutions between member states in order to ensure peace and security, development, human rights, rule of law and the protection of refugees. The United Nations works to implement these norms and proclaim the rule of law in order to provide safety to civilians. Even though the United Nations tries to improve the situation for refugees, there are states that violate the rule of law and fail to comply with these norms. Hence, human rights

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137 Annan, Kofi A. “We the Peoples...” Nobel Peace Message. New York: Ruder Finn Press, 2002 p. 21
violations become a concern.

Prior to the recent liberalization, after years of military oppression, rule by law has existed in Burma. The rule by law in Burma is foreseen as an instrument of social control. Civilians lacked the trust of the state and the military system. The laws have yet to be revised as the president feels that changes are under small way. A particular reform that will take place towards the end of the 2014 with the assistance of the United Nations Development Programme (UNDP) is the creation of the committee on the Rule of Law Centres, chaired by Daw Aung Sung Suu Kyi. This is the rule of law not rule by law; its main goal is to provide training on the local level in justice issues to legal professionals, police and local administration officials, and community representatives. By acting on this opportunity, Burma is strengthening and exercising its transition into democracy.

Bridges to Justice: Rule of Law Centres for Myanmar examined three models for possible rule of law centres:

Model A – Rule of Law Professional Training Centres would seek to improve the rule of law by strengthening the capacity of justice sector professionals. They would act primarily as training centres for judges, law officers and the private bar. They would aim for a substantial upgrading of knowledge, skills and values. They could also address the legal training needs of other government officials such as the police and those in the General Administration Department.

Model B – Rule of Law Training and Awareness Centres broaden the Model A approach by adding community representatives as a target audience for training. The training content would narrow, focusing more on local legal issues. In addition to knowledge and skills training, it would seek to enable legal professionals and communities to interact more constructively with a view to build public trust in the justice sector.

Model C – Rule of Law Resource Centres take some features from the other two models. They add the important element of direct legal services to the public – this could include criminal and civil legal aid, paralegal assistance and other programmes. The model aims for a coordinated top down/bottom up approach – improving at the same time the justice sector’s capacity to deliver justice and the public’s capacity to seek it.\(^{138}\)

\(^{138}\) UNDP Myanmar, Rule of Law Centres to be established as bridges to justice, http://www.mm.undp.org/content/myanmar/en/home/presscenter/pressreleases/2014/04/03/rule-of-law-centres-to-be-established-as-bridges-to-justice-2 [accessed 7 June 2014]
UNDP has piloted different models of rule of law centres and has proven to be effective in Liberia. Within due time, Burma will demonstrate if the rule of the law pilot program is effective. Nevertheless, laws should be followed and penalties must be put into place to strengthen the rule of law.

In 2008, UNDP in collaboration with the Office of the Governor, Mae Hong Son (Thailand) established the project, Integrated Community Development for Livelihoods and Social Cohesion in Mae Hong Son Province. The purpose of the project was to improve the lives of the residents of Mae Hong Son province in supporting and enhancing the livelihood of the communities. Under the National Human Development Report 2007, Mae Hong Son is the poorest province in Thailand and hosts a large number of displaced people from Burma. Mae Hong Son province has limited basic resources to provide for their continuing expanding population. The project was conducted from 2008 until 2010, and its estimated cost was 1.65 million (USD). The strategic goals were to enhance food security, assist local communities to utilize the services that the government provides, and become prepared if a natural disaster hits. After its completion in 2010, the successful recordings were that it improved the livelihoods of the underprivileged population, and democracy and civil society became part of the decision-making process. The project was carried out within the required time frame, and Mae Hong Son province is still the poorest city in Thailand.

The United Nations High Commissioner for Refugees (UNHCR) protects refugees universally. Their purpose is to ensure that the rights of refugees are being met by the country of origin and host state. These rights include but are not limited to the following: safety, protection

140 Ibid
from discrimination, freedom of movement, right to identity and travel documents, safe return, the right to seek asylum and find safe refuge. The United Nations High Commissioner for Refugees acknowledges Thailand as being a key player in the assistance of refugees from Burma. However, Thailand is not part of the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees. Human Rights Watch, an international organization, commented, “While Thailand is not a party to the 1951 Convention Relating to the Status of the Refugees or its 1967 Protocol…Thailand nevertheless has obligations towards refugees based in customary international law, the most important of which is the obligation not to send them back to any country where they are likely to face persecution; this is the principle of non-refoulement.” 141 Presently, Thailand is not a signatory to these laws and conventions and makes it difficult to foresee positive outcomes that will benefit, assist and safeguard Burmese refugees. There are many advocacy groups as well as non-governmental organizations like Human Rights Watch that monitor and report consistent human rights violations.

As the international community tries to alleviate the pain and suffering of many refugees, United States President Barack Obama, removed the sanctions once laid upon Burma. Reelected in 2012, his first objective was to visit Burma in his campaign to support human rights and democracy. UN High Commissioner for Refugees, Antonio Guterres, visited Thailand and Burma in 2012 in support of both countries agreeing that, “refugees should only return home voluntarily, in safety and in dignity – and should be able to stay home when they do go.” His concern is that he does not want the refugees of today to become the irregular migrants of

Due to the political changes in Burma, the government has shown a willingness to cooperate with humanitarian needs. So far, there have not been many changes.

Since the late 1970s, Human Rights Watch’s primary goal is to defend the rights of people and pursue human dignity as well human rights for all. They make important contributions in promoting and putting into practice the international legal norms such as international human rights law and humanitarian law. Human Rights Watch investigates, reports abuses and adds pressure to those in power when it comes down to rights violations and injustices.

In a 1998 Human Rights Watch report, *Unwanted and Unprotected: Burmese Refugees in Thailand*, it describes the Burmese asylum seekers’ journey to Thai soil beginning in 1984, including when the State Law and Order Restoration Council (SLORC) seized power in Burma in September 1988. The report describes the human rights violations inside Burma, which still continue even after besides the reform. The report also states that Thailand is not in compliance with customary laws. Scholar, Vitit Muntarborn states, “Thai policy has been based upon a ‘closed-door’ policy…” The Thai government offers limited access to the refugees in terms of employment and protection, instead viewing “displaced persons entering Thailand as ‘problems’ to be managed and contained in ‘temporary’ camps with possibilities of repatriation in the future.” They do however; host large numbers of asylum seekers, displaced persons and refugees. There are some cases in Thailand that violates international legal obligations, such as, not to return people to countries where they were likely to face persecution.

A 2012 report, *Ad Hoc and Inadequate: Thailand’s Treatment of Refugees and Asylum Seekers*, explores more in depth Thai refugee policy, on Burmese refugees and questions its
integrity. The report also provides insight on the treatment and conditions of Burmese refugees inside and outside the camps on the Thai-Burma border. The report addresses the impact of political changes in Burma on the predictions for expulsion and the obstacles to resolving this protracted refugee situation. A more recent 2013 report, “All You Can Do is Pray”: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma’s Arakan State, describes the role of the Burmese government and local authorities in the forcible displacement of more than 125,000 Rohingya and other Muslims and the ongoing humanitarian crisis. Burmese officials, community leaders, and Buddhist monks organized and encouraged ethnic Arakanese backed by state security forces to conduct coordinated attacks on Muslim neighborhoods and villages in October 2012 to terrorize and forcibly relocate the population. The tens of thousands of displaced have been denied access to humanitarian aid and been unable to return home.

Kenneth Roth, Executive Director of Human Rights Watch, wrote a letter, Re: Burma’s Military and UN Peacekeeping (March 12, 2014), of concern to the Secretary-General of the United Nations, Ban Ki-moon. He mentions that he does not agree with the Special Advisor on Myanmar, Vijay Nambiar, and his invitation to the Burmese Defense Services (Tatmadaw) Commander in Chief, Senior General Min Aung Hlaing, to participate in the United Nations peacekeeping operations. Mr. Roth communicates, “Tatmadaw remains an unreformed force, as demonstrated in the places where hostilities continue. In Kachin State, for example, the military committed many abuses against Kachin civilians…” He refers to the 2012 report, Untold Miseries: Wartime Abuses and Forced Displacement in Burma’s Kachin State, which illustrates how the Burmese army has attacked Kachin villages, destroyed homes, and forced the displacement. Soldiers threatened and tortured civilians during interrogations and raped women.
Mr. Roth also notes that he is aware that the government is transitioning to democracy however; the 2008 Burmese Constitution grants immunity to past military crimes. Human Rights Watch, for the last 25 years has reported violations of international humanitarian law and human rights law by the military and government of the Burmese people.¹⁴⁵

Refugees International (RI), an independent organization, advocates for lifesaving assistance and protection for displaced people and promotes solutions to displacement crises.¹⁴⁶ Since 1979, Refugees International has assisted refugees by providing food, medicine and education. They send in humanitarian assistance during armed conflicts to assist and protect displaced people from harm. Lastly, they help stateless people obtain legal status. Their work is to encompass the following: climate displacement, humanitarian response, protection & security, statelessness and woman & girls. Michel Gabaudan, Refugees International correspondent for Myanmar, examines and documents the events that are currently taking place in the country. He provides insight on what is important and gives suggestions for the international community to change its ad hoc approach towards Myanmar especially when it comes to the protection & security of the Rohingy Muslims. Refugee’s International’s policy recommendations to the international community are:

- The international community should engage in consistent and coherent advocacy on ethnic minority rights in Myanmar, which must be raised in all negotiations with the government in support of political and economic reforms.

- The United Nations system should consistently prioritize the defense of human rights in Myanmar in line with its “Rights Up Front” agenda, and it should adopt common positions across agencies to be backed up by statements from the UN Secretary General.

- Humanitarian agencies and donor governments should: protect and assist all people displaced within the country as a result of violence or violations of human rights

as internally displaced persons with equal rights;

- In Rakhine State, the UN and the international community at the highest levels should press Myanmar’s central government to: facilitate humanitarian access by creating conditions in which humanitarians can operate and countering hate speech; end impunity for individuals who have committed human rights abuses; present its plan of action for the Rakhine State; collaborate with donors to identify pilot areas where freedom of movement for Muslim communities can be restored; take steps to address the issue of citizenship for stateless populations.  

Refugees International’s apprehension for the Rohingya has taken advocacy to an international level, in which the report of, One Year after the Violence Began: Civil Society Organizations Deeply Concerned by the Human Rights and Humanitarian Situation of Stateless Rohingya, was drafted and documented. In the document, Refugee International provides numerous examples of the discrimination and abuses towards the Rohingya. First, the Burmese government has publicly stated that the Rohingya are illegal immigrants. They are now stateless due to the 1982 Citizenship Act and no longer have a right to citizenship in Burma. Furthermore, under international law, forced statelessness is considered crimes against humanity, i.e., systematic attacks on a particular civilian population, human rights and humanitarian abuses that still continue in the Rakine State. Now, there are 73 civil society organizations, who are signatories to the document. It addresses steps that should be taken from by Myanmar government:

- Provide protection to all people living in Rakhine State, end impunity, prosecute all perpetrators of violence and other abuses through a fair judicial system, arrange for immediate release of those who have been arbitrarily detained and provide adequate redress to all victims of violence and injustice.
- Invite the UN Office of the High Commissioner for Human Rights to establish an office.
- Review the 1982 Citizenship Act and other discriminatory laws and practices to ensure that all persons have equal rights and equal access to citizenship and are not discriminated against on grounds of ethnicity.


It also addresses the governments of refugee recipient countries:

- Protect all refugees and asylum seekers coming from Myanmar – and take into account the acute and specific protection needs of stateless Rohingya.
- Desist from arbitrarily detaining Rohingya refugees and asylum seekers and attempting to return them to Myanmar in violation of the principle of non-refoulement.  

Refugee International provides advocacy work for a better Burma. However, if the government does not acknowledge the Rohingya Muslims as part of their population, the extensive efforts for advocacy will vanished.

Then there is the International Rescue Committee (IRC), who respond to emergencies and implement long-term programs in order to dismiss and humanitarian concern. Their objective is to work at the ground level with local communities and implement these programs to address health and development needs. They work alongside ground level community members, community based organizations and NGO partners.

As of 1984, IRC has been concerned with conditions in Thailand because of the mass influx of Burmese refugees along the Thailand-Burma border. Approximately, 140,000 refugees are along the border in nine camps where IRC provides aid. They provide the following: water, food, health care, sanitation, protection for children and abused women, and legal assistance and resettlement processing. IRC believes that reinstating people back to their livelihoods is an important part of recovery. This will enable communities to meet their standard of living and positive awareness within their surroundings. Even though IRC provides assistance to the refugees, challenges do arise at the camps. Fires, whether provoked or unprovoked, have been a huge concern within the camps. Once the bamboo made homes are in flames, it spreads like wild fire into neighboring houses. In late December within a matter of days, a fire broke out in the

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Mae La camp and in the Ban Mai Nai Soi camp leaving almost 600-700 Karen and Karenni homeless. Director of IRC programs in Thailand, Christine Petrie stated, “We are saddened by this tragedy which has displaced so many people…This is a sad reminder of the refugees’ vulnerable living condition. Families lost all their possessions in a matter of minutes.” IRC response to this incident was to provide counseling, mosquito nets, hygiene necessities and most importantly rebuild their homes.

Other challenges arise for the IRC, as attacks on humanitarian organizations in Burma are prominent. The 2008 Cyclone Nargis left Burma in shambles. IRC became a known presence in Burma by providing health, water and as well sanitation for those that were displaced. They have also been involved in 2010 with the Cyclone Giri in the Rakine State and 2012, in the Rakine State civil conflict. In late March, attacks on humanitarian aid organizations and IRC offices within the Rakine State were affected. The attacks lasted two days and the IRC was forced to suspend work throughout the Rakhine State. IRC president, David Miliband stated, “IRC aid workers in Rakhine State work alongside the local community to rebuild their infrastructure, strengthen their economy and work towards a stronger and more stable Myanmar…Safe and unimpeded access to people who are in need is one of the very basic standards of international law.” Within the Rakhine State they currently work with 220 villages. Their focus is also on livelihood and development programs, healthcare, clean water and sanitation.

The International Rescue Committee objective for Burma is to provide the following:

- The IRC trains midwives and community health workers and supports mobile clinics to improve access to healthcare for women and children in remote areas.
- The IRC works with local communities to increase access to clean drinking water, improve sanitation facilities and prevent the outbreak of diseases by constructing water collection systems and building latrines and wash stands.
- The IRC promotes economic recovery, teaching modern agricultural technology and techniques to farmers.
- The IRC empowers communities to identify their own development needs and design and manage their own recovery projects, such as schools and health centers.

A major contribution that IRC has added to the assistance of the Burmese refugees is the Mae Tao Clinic. Located on the outskirts of the town of Mae Sot in northeastern Thailand, the clinic is the only source of medical care along the Thailand-Burma border. In 1989, the Mae Tao Clinic (MTC) was established to provide accessible health care to displaced Burmese and ethnic people along the Thai-Burma border. The IRC joined the project in 1999 by providing support, funding and technical assistance. The clinic provides free health care to tens of thousands of Burmese refugees and migrants each year. The Mao Tao Clinic offers different services such as, reproductive health, surgery, births and diseases treatment for example malaria, cholera, measles and tuberculosis. The clinic has become well known and warranted, many helpless people with any financial means travel long and far to obtain the necessary healthcare. Aside from IRC, there are large number of donors which share the same vision as the Mao Tao Clinic, to continue providing quality health and social services along the Thai-Border.
IRC president, David Miliband offers his thoughts and advocates on behalf of the Burmese refugees. In an article, *Miliband puts focus back on refugees* in the “Myanmar Times.” He articulates to the international donors and investors not to forget the refugees regardless of the so-called new governmental reform. Since, Burma’s government is transitioning into democracy, funding is being cut to organizations that aid Burmese refugees residing in Thailand. This affects the ability to provide services for those who need it and have depended on it. In addition, it has reported that, while there is “a slow trickle of refugees returning to Myanmar following recent political reforms, people are still arriving in the camps…”¹⁵² Many do not feel it is the right time to return to Burma. A number have travelled back and communicated that basic needs have been challenging as in the case of drinking water. Burma may be opening the doors to democracy but is it still not providing refugees the opportunity to return back to its land.

Advocacy work is believed to be more beneficial in conjunction with other organizations. Burma Partnership depicts this environment and enhances the exposure of democratic change in Burma to the international community. Their mission is for Burma to be free and democratic in ensuring their guiding principles of human rights, equality and justice. Burma Partnership encompasses a diverse network of organizations in the Asia-Pacific region such as, political and civil society organizations and solidarity organizations. A particular focus Burma Partnership seeks is to spread comprehensive information as well as resources that are reflective for change. The Myanmar National Human Rights Commission (MNHRC) was established on September 5, 2011, ideally to promote and safeguard the fundamental rights of Burmese citizens. Burma Partnership

begs to differ; they believe the commission is a façade in order to make the international community, especially the UNHCR content. The MNHRC does not believe that the government is capable of carrying out this internal investigation of human right violations amongst the military. This may be true as the President Thein Sein established the MNHRC commission and he also appointed the members, all of whom are supposedly retired civil servants who have a past history of defending the military regime’s record of human rights violations.\(^\text{153}\)

Community based organizations are the ears and eyes of civilians during times of political unrest. They provide insight to forbidden militarized areas. Presently, there are a number of local community organizations whose goal is to enforce peacebuilding in the Kachin state. Since the 1960s, the Kachin state has endured years of insurgencies and brutal military attacks. The community based organizations play a vigorous role in resolving and diminishing the conflicts in Burma. They offer an opportunity to build and establish closer relationships as well assistance in areas where international organizations and the community are unable to. The Kachin Baptist Convention mission utilizes public awareness through peace and reconciliation for the community to voice their concerns over government brutalities. They also provide protection to refugees and displaced people. Another community based organization in the Kachin state is the Kachin Development Networking Group which is an interconnection of civil society and development organizations in promoting political reform and justice for the people.

Another community based organization is the Border Consortium (TBC) also known as, Thailand-Burma Border Consortium that works with Burmese refugees and displaced people. They provide assistance at the local community level were the basic humanitarian needs such as,

food, and camp management are provided. It conducts ongoing local research inside the camps. Their goal is to “envision a peaceful Burma where there is full respect for human rights, diversity is embraced, and communities are able to prosper.” Then there is Burma Campaign United Kingdom whose goal is to promote and raise awareness of the situation in Burma. They promote human rights, development and democracy in Burma. They also open the eyes of the international community to see and pursue action as well support Burma. They do so by generating thousands of stories about Burma in the media and organizing campaign groups worldwide in building a solidarity movement to help the people of Burma.

In today’s world, media news reporting has promoted firsthand insight to events that the world has forsaken. It is another way that information will be provided effectively and efficiently. This entails the following: print media (newspapers, newsmagazines), broadcast news (radio and television), and the internet (online newspapers, news blogs, social media). Video cameras, phone cameras, pictures and the World Wide Web have become the instant news cast, they provide a story. As in the case of Burma, however, states that are transitioning into democracy but actions speak differently. The first event that took place in 2012, Rohingya Muslims men were accused of gang-raping a Buddhist woman. After two years of the accusations, violence has erupted in Burma. Violence against the Rohingya Muslims has become an international crisis, where the world has opened its eyes to the underlying goal of the country: the eradication of Rohingyas in Burma. There is a consistent hatred towards the Rohingya Muslims; burning out their villages, angry mobs attacking and murdering people. The Burmese military, government and police have chosen not to act, instead to let it happen and then outline their concerns in the Citizen Law of 1982.

On Monday April 18th, 2014, PBS broadcasting, a nonprofit organization who broadcasts and informs Americans thorough television and web, aired “Atrocities in Myanmar.” This documentary is about the continuance of violence and persecution of Rohingya Muslims. Muslims are being attacked by mobs of Buddhist, in spite of Buddhist principles of nonviolence. “They refer to the Rohingya as subhuman, but beyond that they actually believe the Rohingya are subhuman,” says Matthew Smith, executive director of Fortify Rights, an independent organization to protect and defend human rights. The focus of Fortify Rights, thus so far is on Burma, on which it produces reports, briefs, and press releases. In addition, the organization compiles multimedia reports, and release video features. Their latest publication is, Policies of Persecution (Ending Abusive State Policies Against Rohingya Muslims Myanmar). PBS documented earlier this year the transitional aspect of Burma as a democratic nation. It was aired on April 14, 2014, “Inside Myanmar’s transition from isolation to openness.” The documentary is about Myanmar and how it was kept isolated from the world for more than half a century; it was reported by Jeffrey Brown from Myanmar. PBS revealed the intense brutality perpetrated on the Rohingyas in the film aired on August 22, 2103 “Buddhist-Muslim Tensions in Burma.” This was a year after the beginning of what the international community thought was a small civil strife between religious groups. This religious strife has been encouraged by a radical Theravada Buddhist monk named Wirathu. He currently leads a nationalist movement called 969. Another impromptu documentary was aired on December 4, 2013 on Thomson Reuters, an international multimedia news agency and financial markets, “Thailand Vicious circle awaits Rohingya refugees in Thailand.” This documentary focuses on the Rohingya refugees who seek

safety and refuge in Thailand and end up in illegal camps to be human-trafficked and held for ransom. The Thai authority becomes unconcerned.\textsuperscript{158}

Furthermore, a news report by reporter Jason Szep from Reuters claimed that, “Thailand secretly supplies Myanmar refugees to trafficking rings.” With a team at hand he tracked down and succeeded in finding the suspicious camps for the Rohingya Muslims in Thailand. Many Rohingyas try to escape the atrocities of the anti-muslim rhetoric and violence in Myanmar. Refugees are promised security as well as safety towards their long journey by boat and the jungles of southern Thailand. Instead they encounter illegal hidden camps in southern Thailand to find out they are being held for ransom and sold to human traffickers. They are beaten, abused, and held against their will and sold. Throughout their investigation time was spent talking to villagers and people in southern Thailand. It was complicated and difficult for them to locate these hidden camps. They wanted to have insight as well as provide recordings for the world to see and what was actually going on in Thailand. The investigation had to be conducted discreetly, if not it would have compromised their lives, if the guards would have seen movements by the perimeter of the camps. The guards were armed and a potential threat to the investigation. An important observation was that the Thai Royal Authority has not reported pertain any distress with the refugees and look the other way. After the Reuters team risked their lives, they won the international reporting 2014. Jason Szep comments, “What we were writing about was under-reported. I hope through this, there is greater international attention to the risks and presence of religious violence in Myanmar.”\textsuperscript{159} This provides public awareness of how Burma and Thailand are not in compliance with the rules of refugee law and international law to


safeguard refugees. Instead the governments adhere to a set of laws proposed by the 1982 Citizenship Law.

Finally, after almost two years of constant religious strife and recently the expulsion of Doctors without Borders, who provided aid to the Rohingyas, Burmese authorities declared a ban on gathering during the hours of 9pm – 5am in Mandalay. Now, military authorities are back on the streets in theoretically feared of a bigger and wider scale of ongoing organized violence by the Buddhist. The government has enacted a two-child limit on Rohingya, a ban on interfaith marriages and a governmental policy of discrimination against Rohingya. In the Karen State, many are skeptical that NOW is not the time for refugees to return home. The reasons are the following: food supplies are cut by 15kg rice a month to now 7 kilos, lack of financial funds to build villages, healthcare and education for the refugees are cut, lack of farmland and settlements and a very large number of unexploded mines. Most importantly, unresolved and continuance friction between villagers and the Burmese army, still serves as a threat. There is no trust between the two parties and fear becomes a distress.

International state actors, such as United States and Europe, had sanctions set on Burma, while the military dictatorship was in place, now, these sanctions have been lifted in order to encourage democracy and reward its progress and transition. However, does Burma deserve appraisal for their democratic efforts? There are still serious human rights abuses on the Karen tribe and the Rohingyas, which to some maybe heading towards ethnic cleansing. The international community holds a high concern for the risk of genocide, as was the case in Rwanda (1994), when a genocidal mass slaughter of Tutsi (500,000–1,000,000) and moderate Hutu erupted.
Chapter VII: Conclusion

A. “The Problem”

Sometimes I think that a parody of democracy could be more dangerous than a blatant dictatorship, because that gives people an opportunity to avoid doing anything about it.\(^{(160)}\)

-Aung San Suu Kyi

Since the end of the Cold War in the 1990s, democracy has become the predominant form of government globally. As democracy was introduced in new nations, countries began to hold free and fair elections. A decade earlier during the 1980s in Latin America, democracy became the preferred governing system: Peru (1980), Bolivia (1982), Argentina (1983), Uruguay (1984) Brazil (1985) and Chile (1987). Across the world, the 1990s saw the dissolution of the Soviet Union and its 15 republics have all adopted forms of democracy. The definition of democracy, however, varied. In some countries that claim to have embraced the tenets of democracy, the rights and freedoms associated with democracy have not always come into friction. Many of the elected officials that took office assumed a political affiliation more along the lines of authoritarian regimes. Winning an election provides a sense of entitlement for the popular party: especially if a one-party system dominates all branches of government. It can provide a large amount of power to the ruling party and fail to guarantee individual rights.

It is still not clear which way Burma will go. In 2010, free and fair democratic elections were held in Burma. The results of the elections were scrutinized by the Burmese population as they believed the outcome was manipulated. The newly elected president was a former general from the previous ruling body, the military junta. Many believe the term “democracy” has been used as a façade to hide the true goals of the military junta. While Burma had previously closed its doors to the international community, the doors are now open due to the adapting of

Democratic reforms. Burma announced its transition to democracy and President Thein Sein declared that for “…democracy to flourish in our country, we will have to undertake more political and economic reforms in the years ahead… [through the] assistance and understanding of the U.S. and the rest of the international community.” Democratic reform in Burma has developed due to political and economic pressure from the west and in the last two years, the government began to implement democratic reform in order to appease the international community. Such acts included the release of Aung San Suu Kyi, who is now a member of parliament, and the release of other political prisoners, including the implementation of ceasefire agreement. Foreign relations between the United States and Europe have improved, lifting economic sanctions placed on Burma. Lifting the economic sanctions against Burma sends a positive message to the Burmese government, reinforcing decisions that have been made throughout the country. However, at the same time, ethnic violence in the Rakine state continues to transpire against the Rohingya Muslims and mars the democratic progress made thus far. The international community is appalled by the Burmese government’s violations of human rights and the lack of domestic laws that protect their citizens from violence. The international community is wary of the situation. With economic sanctions lifted, Burma appears to be steadily moving towards a progressive democratic state, but the surge of ethnic violence and human rights violations create concerns that Burma’s democratic reforms are a façade, concealing the reality of Burma and its internal, repressive tactics.

After decades of military oppression, the Burmese government realized that it was time to open the doors and attain economic assistance from foreign nations; they no longer had the resources to maintain a quality standard of living. Due to its long authoritarian history, however, the Burmese junta struggles with the concept of democracy in the 21st century: freedom and

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equality before the law, civil liberties, human rights and a thriving civil society. Burmese military leaders are not familiar with these terms or understand how to fully implement these liberties for their citizens. Burma needs to put more effort into creating improve on peace treaties between ethnic groups. All ethnic groups should be treated equally by the Burmese government and by everyday citizens. Human rights should be a priority for the Burmese government. President Thein Sein claims that Burma is adopting democratic reforms; yet, the military presence in Burma is still strong. Nevertheless, the military supports the Burmese Constitution of 2008 and the 1982 Citizenship Law. These laws, however, have not been amended to protect the Rohingya Muslims and continue to allow ethnic violence against these peoples. True democracy does not include religious oppression. The military still dominates many areas of Burma in order to maintain peace between Buddhists and Muslims. There is an ongoing the current civil war in the Kachin State and a curfew has been imposed in Mandalay, illustrating continued unrest.

As Burma continues to move into a fully democratic state, one question remains unclear: what will happen to the refugees? Citizens of Burma fled the country seeking safety and asylum elsewhere. However, even though Burma claims to be a democracy today, the ethnic violence and lack of human rights protections still continue. How can Muslim refugees return home, when the, military seems intent on eradicating the Islamic religion? This is in addition to the years of armed conflict in the Karen, Shan and Kachin state.

Burmese refugees find themselves frightened, unwanted and unprotected within their homeland but when they seek shelter in Thailand they find that there are no protections there either. Countless refugees have spent decades on the Thai-Burma border, facing discrimination by the Thai government. Returning home remains a distant dream since the internal conflicts in Burma still ongoing. In Thailand they are asylum-seekers, refugees, and stateless whether on the
Thai-Burma border or in the outskirts of Thailand. The refugees are placed in the camps (they are not allowed outside the camps) where they receive assistance and become dependent on humanitarian organizations. The refugees are confined to the camps and are exposed to violations and abuses. UNHCR and NGOs try to assist as much as they can but the Thai government and its army interferes. Even though Thailand has hosted Burmese refugees for decades, Thailand has made it clear that they do not a continued influx of refugees. The life of a Burmese refugee is one of constant fear, regardless of where he or she seeks asylum.

B. Policy Recommendations

Democratic policies vary by nation, but are expected to coincide with the needs of the people and freedoms and liberties must be protected and provided for. As Burma continues to develop its democratic state and enacts laws and policies that reflect democratic ideals, it must ensure that the reforms are universal. Existing policies show distinct flaws, creating an assumption that Burma may be democratic in name only. When developing democratic laws and structures, Burma must reflect on the following:

- Attention to rebuilding stability in order to sustain itself as a country and improve relationship with international actors.
- Democracy will move slowly in Burma with emphasis on the 2015 elections, the lifting of economic sanctions
- Need for more stress on the main essential parts of democracy, such as human protecting rights.
- The power of the state needs to be constantly checked to make sure the government exists for the people of Burma.

The state holds the responsibility of being the face of the country and should live up to its social contract with the people. The continued internal suppression of selective Burmese by the government must stop if Burma is to fully embrace democratic reforms.
It is the responsibility of the Burmese government to uphold democratic norms and ensure that there are civil and human rights protections for all citizens. Many humanitarian organizations continue to advocate for a free Burma, but, at the end of the day it is the government who determines whether or not the rule of law will be supported. The top priority should be the lawful treatment of all individuals and the protection of their basic human rights. The following are policy recommendations for Burma to live up to its promises for a more democratic society.

POLICY RECOMMENDATIONS:

- Amend the 2008 Constitution to ensure legislation and policies are in line with international human rights laws and standards.

- Amend the 1982 Citizenship Law, to eliminate statelessness and ensure equal access to citizenship rights for the Rohingya. In addition to in accordance with article 7 of the Convention on the Rights of the Child to ensure that Rohingya children can exercise the right to acquire a nationality where otherwise they would be stateless because they have no relevant links to another state. 162

- Work toward negotiations between the government and ethnic minority, ceasefire agreements;

- Provide equal protection under the law to all ethnic nationalities

- Hold accountable all those perpetrators (969 Movement) who have committed human rights violations and discriminatory acts towards the Rohingya Muslims and any other ethnic nationality

- Provide freedom of movement for refugees, asylum-seekers, displaced persons and stateless people. Allow for the registration of all children born in Myanmar and give them citizenship regardless of their origin and without any discrimination, and ensure they are provided with birth certificates, identity cards, and other government-issued documents. 163

- Ensure protection of civilians during military operations

- Release all political prisoners


- Allow access to international organizations to be able to provide the basic needs of refugees, asylum-seekers, internally displaced and stateless people.

- Ratify the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as well as the Protocols and the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness

**Thailand**

Thailand’s policies’ regarding refugees is simple: they are confined in camps, ignored and shunned. The Thai government fails to establish policies that assist in refugee protections, even though they have hosted thousands of Burmese refugees on Thai soil. Refugees are vulnerable to abusive treatment by the Thai Royal Army, making them susceptible to human trafficking. The Royal Thai government should amend the Provincial Admissions Board to register refugees according to international refugee standards. Priority should be placed on treatment, basic human rights and safety for the refugees. The following are policy recommendations to improve refugee condition in Thailand:

**POLICY RECOMMENDATIONS:**

- Allow stateless people to acquire citizenship: Civil Registration Act – this revised act is designed to address a massive backlog of birth registration cases regarding refugee children born in Thailand whose parents are from Burma.

- Ensure that the lives of Rohingya are not at risk and that they are treated in accordance with accepted international humanitarian standards

- Allow access to international organizations to be able to provide the basic needs of refugees and asylum-seekers

- Hold Thailand liable for the trafficking of Rohingya Muslims.

- Prevent forcing the Rohingya refugees and asylum seekers, including the boatpeople, back to Burma, where their lives will be in danger

- Ratify the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as well as the Protocols and the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness
If these policies are implemented then perhaps the lives of refugees will improve, their rights can be respected, they can return home and thrive in a flourishing democracy.
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